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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Tuesday, October 7, 2008

DEPARTMENT OF HOMELAND SECURITY

5 CFR Part 9701

[Docket No. DHS–2004–0001]

RIN 1601–AA19

Management Directorate; Department of Homeland Security Human Resources Management System

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Implementation Date.

SUMMARY: This notice informs the public of the operative date the Department of Homeland Security is rescinding application of the Department of Homeland Security Human Resources Management System.

DATES: Applicable beginning October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Lauria, Deputy Director for Performance Management, Department of Homeland Security, Office of the Chief Human Capital Officer, (202) 357–8240.

SUPPLEMENTARY INFORMATION:

Authority: 5 U.S.C. 9701; 5 CFR 9701.102.

On February 1, 2005, the Department of Homeland Security (DHS) and the Office of Personnel Management (OPM) jointly issued final regulations at 5 CFR Part 9701 establishing a Department of Homeland Security Human Resources Management System (the ''System''). Pursuant to 5 CFR 9701.102(b)(2), Subpart A of the System became applicable to eligible DHS employees on March 3, 2005. Thereafter, DHS extended coverage of Subparts D (Performance Management), F (Adverse Actions) and G (Appeals) of the regulations to certain eligible DHS employees within some DHS components. DHS phased in coverage to certain employees under Subpart D (Performance Management) beginning April 1, 2007 and, similarly, coverage under Subpart F (Adverse Actions) and G (Appeals) beginning May 1, 2007. The provisions ultimately covered more than 35,000 eligible DHS employees.

On September 30, 2008, the President signed the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009, Public Law 110–329 (2008) (the ''FY 09 DHS Appropriations Act''). Congress provided in the FY 09 DHS Appropriations Act at Section 522(a), ''None of the funds provided by this or any other Act may be obligated for the development, testing, deployment, or operation of any portion of a human resources management system authorized by 5 U.S.C. 9701(a), or by regulations prescribed pursuant to such section, for an employee as defined in 5 U.S.C. 7103(a)(2).''

As a result of this enactment, and pursuant to 5 CFR 9701.102(e), effective October 1, 2008, the Department is rescinding application of 5 CFR 9701, Subparts A–G, as to all eligible, covered employees Department-wide. DHS components will convert employees covered by these subparts to coverage under applicable Title 5 provisions. Rescinding application also rescinds the waivers made in 5 CFR part 9701, including waivers of Title 5 Chapters 43, 75, and 77.

The Department has coordinated these actions with the Office of Personnel Management and has provided separate advance notice to affected employees and labor organizations, as well as to the Merit System Protection Board.

Dated: October 1, 2008.

Thomas D. Cairns,

Chief Human Capital Officer, Department of Homeland Security.

[FR Doc. E8–23735 Filed 10–6–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF DEFENSE

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 9901

RIN 3206–AL62

National Security Personnel System; Correction

AGENCY: Department of Defense; Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: The Department of Defense (DoD) and the Office of Personnel Management (OPM) published in the **Federal Register** of September 26, 2008 (73 FR 56344) a final rule governing the operation of the National Security Personnel System (NSPS), a human resources management system for DoD, as originally authorized by the National Defense Authorization Act for Fiscal Year 2004 and amended by the National Defense Authorization Act for Fiscal Year 2008. This correction document clarifies the effective date of the final rule.

DATES: Effective October 7, 2008.

FOR FURTHER INFORMATION CONTACT: At DoD, Bradley B. Bunn, (703) 696–5303; for OPM, Charles D. Grimes III, (202) 418–3163.

SUPPLEMENTARY INFORMATION: In FR Doc. E8–22483, appearing on page 56344 in the **Federal Register** of Friday, September 26, 2008, the **DATES** section should read, ''Effective November 25, 2008.''

Office of Personnel Management.

Charles D. Grimes III,

Deputy Associate Director, Center for Performance and Pay Systems, Department of Defense.

Bradley B. Bunn,

Program Executive Officer, National Security Personnel System.

[FR Doc. E8–23727 Filed 10–6–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0976; Directorate Identifier 2008–NM–145–AD; Amendment 39–15685; AD 2008–21–01]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Model BAe.125 Series 800A (including C–29A and U–125) Airplanes, and Hawker Beechcraft Model Hawker 800XP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model BAe.125 series 800A (including C–29A and U–125) airplanes, and Hawker Beechcraft Model Hawker 800XP airplanes. This AD requires doing an inspection to determine the serial number and part number on the main landing gear (MLG) upper casing, and replacing the MLG assembly with a serviceable MLG assembly if necessary. This AD results from a report indicating that the MLG casings have received improper hydrogen embrittlement relief. We are issuing this AD to prevent a fracture of the MLG casings and a collapse of the affected MLG, which could adversely affect the airplane's continued safe flight and landing.

DATES: This AD is effective October 22, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 22, 2008.

We must receive comments on this AD by December 8, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that the main landing gear (MLG) casings have improper hydrogen embrittlement relief on certain Hawker Beechcraft Corporation Model BAe.125 series 800A (including C–29A and U–125) airplanes, and Hawker Beechcraft Model Hawker 800XP airplanes. Certain MLG casings did not receive proper hydrogen embrittlement relief during production. Improper hydrogen embrittlement relief, if not corrected, could result in a fracture of the MLG casings and a collapse of the affected MLG, which could adversely affect the airplane's continued safe flight and landing.

Relevant Service Information

We have reviewed Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008. The service bulletin describes procedures for doing an inspection to determine the serial number and part number on the MLG assembly, and replacing the MLG assembly with a serviceable MLG assembly if necessary. The service bulletin also specifies to contact the manufacturer to report if any affected serial number is found, return spare parts to the manufacturer and report accomplishment of the service bulletin.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Service Bulletin and This AD.''

Differences Between the Service Bulletin and This AD

Although paragraph 1.D., ''Compliance'' of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, specifies a compliance time of within 200 flight cycles since installation of the affected MLG assembly, or within 60 days after the receipt of the service bulletin, whichever occurs first, this AD does not include that compliance time. We have determined that a compliance time of 30 days after the effective date of this AD is necessary to address the unsafe condition. In developing an appropriate compliance time of this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. The difference has been coordinated with Hawker Beechcraft Corporation.

Although the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, specify the following actions, this AD does not include those requirements.

- Contact the manufacturer if no affected serial number is found;
- Return spare parts to the manufacturer; and
- Report accomplishment of the service bulletin.

The Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, specify to inspect for serial numbers on the MLG assembly to determine if any MLG assembly with a serial number identified in Table 1 of the service bulletin is installed on the airplane. The accomplishment instructions do not specify an inspection to determine if any part identified in the ''spares'' paragraph 1.A.(2) of the service bulletin is installed. In order to address all affected parts, this AD requires doing an inspection to determine if the serial number and part number of the MLG upper casings are from either Table 1 or paragraph 1.A.(2) of the service bulletin.

FAA's Justification and Determination of the Effective Date

Improper hydrogen embrittlement relief of the MLG casings could result in a fracture of the MLG casings and a

collapse of the affected MLG, which could adversely affect the airplane's continued safe flight and landing. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the proper functioning of the MLG assembly and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0976; Directorate Identifier 2008–NM–145–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–21–01 Hawker Beechcraft Corporation (Formerly Raytheon Aircraft Company): Amendment 39–15685. Docket No. FAA–2008–0976; Directorate Identifier 2008–NM–145–AD.

Effective Date

(a) This airworthiness directive (AD) is effective October 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hawker Beechcraft Corporation Model BAe.125 series 800A (including C–29A and U–125) airplanes, and Hawker Beechcraft Model Hawker 800XP airplanes, certificated in any category; having serial numbers identified in Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008.

Unsafe Condition

(d) This AD results from a report indicating that the main landing gear (MLG) casings have received improper hydrogen embrittlement relief. We are issuing this AD to prevent a fracture of the MLG casings and a collapse of the affected MLG, which could adversely affect the airplane's continued safe flight and landing.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspection

(f) Within 30 days after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Do an inspection to determine whether an MLG upper casing, having a serial number and part number identified in Table 1 of the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, is installed.

(2) Do an inspection to determine whether an MLG upper casing, having a part number and serial number identified in paragraph 1.A.(2) of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, is installed.

Replacement

(g) If any MLG upper casing having a serial number and part number identified in Table 1 of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, or in paragraph 1.A.(2) of the service bulletin, is found during the inspection required by paragraph (f) of this AD: Within 30 days after the effective date of this AD, replace the MLG assembly with a serviceable MLG assembly, in accordance with the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008.

Actions Not Required

(h) Although the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, specify to contact the manufacturer, return spare parts to the manufacturer, and report accomplishment of the service bulletin to the manufacturer, this AD does not include those requirements.

Parts Installation

(i) As of the effective date of this AD, no person may install, on any airplane, a MLG assembly having any serial number identified in Table 1 of the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008.

(j) As of the effective date of this AD, no person may install, on any airplane, a MLG assembly having any serial number and part number identified in paragraph 1.A.(2) of Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008.

Special Flight Permit

(k) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the

airplane to a location where the requirements of this AD can be accomplished, provided that the flight to the flight service center is at the minimum allowed weight. Concurrence by the Manager, Wichita Aircraft Certification Office (ACO), FAA, is required prior to issuance of the special flight permit.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Wichita ACO, FAA, *Attn:* William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(m) You must use Hawker Beechcraft Mandatory Service Bulletin SB 32–3920, dated August 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 20, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–23400 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9321]

RIN 1545–BE79

Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9321) which were published in the **Federal Register** on April 17, 2007 (72 FR 19323), corrected July 31, 2007 (72 FR 41620) and September 24, 2007 (72 FR 54945). The final regulations relate to section 409A and nonqualified deferred compensation plans.

DATES: This correction is effective October 7, 2008.

Applicability date: April 17, 2007.

FOR FURTHER INFORMATION: Guy R. Traynor, (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to this document are under section 409A of the Internal Revenue Code.

Need for Correction

As published, the correcting amendment of September 24, 2008 (72 FR 54945) to final regulations (TD 9321) contains errors that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment.

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.409A–6(a)(3)(i), the third sentence is corrected to read as follows:

§ 1.409A–6 Application of section 409A and effective dates.

* * * * *

(a) * * *

(3) * * *

(i) *Nonaccount balance plans.* * * * For purposes of calculating the present value of a benefit under this paragraph (a)(3)(i), reasonable actuarial assumptions and methods must be used. * * *

* * * * *

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–23652 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 101]

RIN 1105–AB29

Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code

AGENCY: Executive Office for United States Trustees (EOUST), Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, through its component, EOUST, is issuing this final rule (rule) pursuant to Section 602 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).[1] The BAPCPA requires the Department to issue rules requiring uniform forms for final reports (Uniform Forms) by trustees in cases under chapters 7, 12, and 13 of title 11. The BAPCPA requires the rule to strike the best achievable practical balance between (1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system, (2) economy, simplicity, and lack of undue burden on persons with a duty to file these reports, and (3) appropriate privacy concerns and safeguards.

DATES: *Effective Date:* This rule is effective April 1, 2009.

ADDRESSES: Executive Office for United States Trustees (EOUST), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Ramona Elliott, General Counsel, or Larry Wahlquist, Office of General Counsel, at (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 4, 2008 at 73 FR 6447, the Department published a proposed rule

[1] Codified at 28 U.S.C. 589b.

on this topic. Before the comment period closed on April 4, 2008, EOUST, within the Department, received comments from 71 commenters. The comments received and EOUST's responses are discussed below. This final rule finalizes the proposed rule with changes that reduce the burden on trustees.

Discussion

The administration of all chapter 7, 12, and 13 bankruptcy cases is entrusted to private persons who are trustees under the supervision and oversight of a regional United States Trustee.[2] As distinguished from trustees, United States Trustees are employees of the Department of Justice.

In every case, a trustee must file with the court and submit to the United States Trustee a final report and final account of his or her case administration. The United States Trustee reviews these reports and they are then filed with the court.

While the trustee final report forms currently used across the country essentially serve the same purpose and convey the same information, the format of the forms and required attachments, and even the names of the forms, can be different. In fact, there are over a hundred different versions of these forms in use throughout the country. With the passage of BAPCPA, Congress directed the Attorney General to draft rules creating nationally uniform forms for trustee final reports. The Attorney General delegated this authority to the Director, Executive Office for United States Trustees. In response to this congressional mandate, the Director publishes this rule, which requires trustees to utilize nationally uniform final report forms rather than the local forms currently in effect. This rule does not impose requirements on the general public; it imposes requirements only upon trustees who are supervised by United States Trustees. UST Forms 101–7–TFR, 101–7–NFR, 101–7–TDR, 101–7–NDR, 101–12–FR–S, 101–13–FR–S, 101–12–FR–C, and 101–13–FR–C[3] are the final report Uniform Forms required by this rule. The information required by these forms is set forth in section 58.7 in the amendatory text below. These Uniform Forms will facilitate the review of a trustee's case administration, which will assist in maintaining the public's trust in the bankruptcy system. In addition, these reports, once filed in a case, will be available to the general public at the office of the clerk of the United States Bankruptcy Court where a case is pending during the hours established by the bankruptcy court clerk. Members of the public should contact individual United States Bankruptcy Courts to obtain information about the policies and procedures for inspection of final reports filed in any particular case. Final reports in cases are also available through the Internet by accessing the Electronic Case Filing System under PACER at *www.pacer.psc.uscourts.gov.*

These Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a ''smart form'' that has been approved by EOUST unless the court offers an automated process, such as the virtual event through CM/ECF described below. A smart form is a document that is data enabled. When it is saved into the industry standard Portable Document Format (PDF), stored data tags are then available for extraction and searching. This is contrary to a form that is not data-enabled, where the PDF is simply an image of the form and data is not uniformly available for searching. The data-enabled form builds upon the existing Adobe PDF/A standard (Version 1.4). Specifically, the standard incorporates the use of XMP metadata or Acroform field and value (F/V) tags within an Adobe PDF document. The current data schema (DTD) is found on *www.usdoj.gov/ust.* Trustees may obtain these ''smart form'' Uniform Forms from their vendor of trustee case management software. Members of the public may obtain blank Uniform Forms from each United States Trustee field office or from EOUST's Web site at *www.usdoj.gov/ust.*

Regarding UST Form 101–7–NDR (used for ''no asset'' cases), the Administrative Office of the United States Courts (AOUSC) is enhancing the courts' CM/ECF system to allow for the filing of this form as a virtual docket event. After a local court adopts this enhancement, trustees will be able to complete the UST Form 101–7–NDR as a virtual entry form electronically via the court's CM/ECF system in lieu of filing an attached PDF. In addition, the CM/ECF system is being designed to collect pertinent NDR data elements and automatically include them with the virtual NDR event, to the extent the data is collected. This will significantly streamline the process for trustees since they will not have to enter additional data in most cases. Based upon representations by AOUSC, this enhancement will be included in CM/ECF version 3.3, which is scheduled to be released to the bankruptcy courts in September of 2008. Given the above release date, and based on past practice, it is reasonable to anticipate that bankruptcy courts will implement version 3.3 by or before March 2009. Therefore, EOUST makes this rule effective April 1, 2009. However, some cases filed within 60 days prior to the rule's effective date may not be filed under the courts' new CM/ECF version 3.3, which will collect the pertinent data elements for the virtual NDR. To prevent confusion and undue burden, trustees are not required to manually enter the information for the NDR for cases filed within 60 days prior to this rule's effective date.

The usage of these Uniform Forms will accomplish Congress' mandate to develop nationally uniform forms for trustee final reports as directed in the BAPCPA. The Uniform Forms will also assist policy-makers, scholars, and the public to better understand the bankruptcy system. Instead of many different versions of trustee final reports, trustees throughout the country will use the same eight forms. This will greatly assist consumers in being able to understand the administration of bankruptcy cases, especially when a consumer is located in a different region from where the bankruptcy case is located. Additionally, the information from the Uniform Forms may be nationally aggregated, which will assist Congress in compiling data to accurately analyze bankruptcy trends when making policy decisions. Scholars and members of the public may also be able to obtain aggregate data with the necessary software.

Summary of Changes in Final Rule

The final rule differs from the proposed rule in the following ways: First, UST Form 101–7–NDR has been modified from an Adobe PDF document to make it a virtual entry form that trustees can complete electronically in the court's docket. Additionally, via the court's CM/ECF virtual event, multiple NDR forms can be filed with the court simultaneously in batch mode format. These changes will significantly reduce the burden on trustees in completing the NDR. Second, the penalty of perjury language has been deleted from the NDR. Third, when trustees file the NDR in cases that have been converted and funds collected, the certification has been altered to read, ''all funds have been returned or transferred to the successor trustee.'' Fourth, the trustee

[2] The United States Trustee Program does not operate in Alabama and North Carolina. Therefore, United States Trustees do not supervise trustees in these two states.

[3] TFR (Trustee's Final Report); NFR (Notice of Trustee's Final Report); TDR (Trustee's Final Account and Distribution Report); NDR (Trustee's Report of No Distribution) FR-S (Standing Trustee's Final Report and Account) FR-C (Case Trustee's Final Report and Account).

certification in UST Form 101–7–TFR that all tax returns have been filed has been deleted.

Discussion of Public Comments

EOUST received 71 comments on the proposed rule, many of which had several sub-comments within them. EOUST has considered each comment carefully and appreciates the time and effort required to prepare and submit each comment. EOUST's responses to the comments are discussed below and are organized according to the structure provided in the Uniform Forms.

A. General Comments

1. General Questions About Completing the Uniform Forms

Comment: Several comments had specific questions about how to complete the Uniform Forms, such as whether the phrase in the Uniform Forms ''assets abandoned'' refers to the specific assets or their monetary value, and whether the phrase ''claims discharged without payment'' refers to the balance amount of claims unpaid or claims for which no payment was made.

Response: The phrase ''assets abandoned'' refers to the monetary amount of the assets abandoned. The phrase ''claims discharged without payment'' refers to both the balance amount of unpaid claims and allowed claims for which no payment was made. Answers to questions such as these about how to complete the Uniform Forms and the meaning of terms or phrases are contained in the instructions that accompany the forms. The instructions are available on EOUST's Web site at *www.usdoj.gov/ust.*

2. Trustee Compensation

Comment: Several comments stated that trustees are only paid $60 for no-asset cases and that this compensation for no-asset cases has not increased in several years, and that it is unfair to require trustees to do extra work without additional compensation. Three of the comments stated it is especially unfair when debtors file in *forma pauperis.*

Response: EOUST recognizes that BAPCPA requires additional work by trustees without corresponding compensation and that compensation for no-asset cases has not increased for several years. However, the authority to increase trustees' compensation is vested with Congress.

3. Entities Affected by the Rule

Comment: One comment stated the rule affects courts and others in addition to trustees.

Response: This comment is correct; the rule does affect more entities that just trustees. However, the rule imposes requirements only upon trustees and not upon the general public or upon the courts.

4. Costs to the Government

Comment: One comment questioned whether the costs identified in the section entitled Executive Order 12866 included costs to the judiciary.

Response: The costs to the government identified in the rule reflect only those costs to EOUST.

5. Number of Cases

Comment: One comment stated that some trustees close more than 500 cases per year.

Response: The 500 cases per year figure was an average number of cases. EOUST recognizes that some trustees close more than 500 cases per year and that some trustees close fewer than 500 cases per year.

6. Data-enabled Court Forms for Pro Se Debtors

Comment: One comment stated that courts should ensure pro se debtors use data enabled court forms and provide the means necessary for them to do so.

Response: Only the Judicial Conference of the United States is authorized to mandate requirements regarding the format of bankruptcy court documents and whether to require pro se debtors to use data enabled court forms.

B. UST Form 101–7–NDR

7. Discussion of Public Comments

EOUST received 71 comments on the proposed rule, many of which had several sub-comments within them. EOUST has considered each comment carefully and appreciates the time Substantial Increase in Burden.

Comment: Many comments stated that the NDR form will substantially increase trustees' costs and workload, and is an undue burden upon trustees.

Response: EOUST recognizes that the NDR will impose a significant burden upon trustees and has worked with AOUSC to reduce this burden. Accordingly, EOUST and AOUSC have developed a virtual entry NDR form that will greatly reduce the burden upon trustees.

8. Automated NDR

Comment: Many comments stated that EOUST should not implement the rule until the NDR can be generated by a more automated process.

Response: EOUST has worked closely with AOUSC to modify the current virtual text entry NDR to incorporate the new data required by BAPCPA. The new virtual entry NDR will be automatically populated in most cases.

9. Balancing of Public Need vs. Burden Upon Trustees

Comment: Many comments stated that the NDR did not sufficiently balance the needs of the public for information with the burden upon trustees as required by the BAPCPA.

Response: With the development of the virtual entry NDR form, the burden upon trustees is greatly reduced. In most cases, the NDR form will be populated by an automated process and trustees may also file multiple NDR forms in batch file method. Accordingly, the needs of the public for information and the burden upon trustees appear now to be appropriately balanced.

10. Economic Impact

Comment: Many comments stated that the economic impact of the NDR is understated and will actually cost trustees more money than EOUST anticipated.

Response: This issue is now moot with the development of the virtual entry NDR.

11. Penalty of Perjury

Comment: Many comments stated that EOUST does not have the authority to require the NDR to be filed under penalty of perjury.

Response: EOUST has removed the requirement to file the NDR under penalty of perjury because the NDR will be a virtual-text entry.

12. Relying Upon Debtors' Schedules

Comment: Many comments stated that the NDR does not provide guidance on whether trustees may rely solely upon debtors' schedules when completing the NDR.

Response: Trustees may rely upon debtors' schedules. In the Instructions that EOUST will post on its Web site, EOUST explains that trustees may rely solely upon the schedules submitted by debtors.

13. Time To Complete NDR

Comment: Many comments stated that the estimated 10 minutes to complete the NDR is understated and that it will actually take longer.

Response: This issue is now moot with the development of the virtual entry NDR.

14. Value of Information

Comment: Several comments stated that there is little value in the information gathered from the NDR and

that the statistics will be invalid or duplicative.

Response: The NDR will enable Congress, academics, and the general public to better understand the bankruptcy process and what happens in a no-asset bankruptcy case. For instance, the amounts of abandoned assets and claims scheduled to be discharged without payment will be available on a national basis.

15. Government Clerk Capturing Data From NDR

Comment: Several comments stated that a government clerk could capture the information from the NDR rather than trustees.

Response: This issue is now moot with the development of the virtual entry NDR. However, it should be noted that Congress mandated trustees, not government clerks, to file final reports.

16. Out of Business

Comment: Several comments stated that increased costs associated with the NDR may drive trustees out of business.

Response: This issue is now moot with the development of the virtual entry NDR.

17. Staff To Input Information

Comment: A few comments stated that not all trustees have staff to input information for the NDR and that it will, therefore, be more costly for them.

Response: This issue is now moot with the development of the virtual entry NDR.

18. Review of Impact of NDR

Comment: Three comments stated that the NDR should not be implemented until its impact upon trustees has been further studied.

Response: Since the virtual entry NDR will now be implemented, there is no need to delay its implementation to study the effect of the Adobe PDF NDR.

19. Batch Filing

Comment: Three comments stated that the NDR should not be implemented until a batch filing method is approved.

Response: Trustees may utilize batch filing with the virtual entry NDR.

20. Data Enabled Forms

Comment: Three comments stated that implementation of the NDR should be delayed until bankruptcy practitioners were mandated to use data enabled bankruptcy court forms.

Response: Only the Judicial Conference of the United States is authorized to mandate requirements regarding the format of bankruptcy court documents. However, AOUSC has worked with EOUST to develop a virtual entry NDR, which will greatly reduce the burden on trustees in completing the NDR.

21. Number of Bankruptcy Cases

Comment: Two comments stated that EOUST should not rely upon the decreasing number of bankruptcy cases as a basis for imposing the NDR since bankruptcy cases will probably increase.

Response: EOUST did not rely upon the number of bankruptcy cases filed as a basis for creating the NDR. Congress mandated creation of uniform forms for trustee final reports in the BAPCPA, now codified at 28 U.S.C. 589b. It is this statutory mandate from Congress that EOUST relied upon in developing the NDR.

22. Simplify NDR

Comment: Two comments stated that EOUST may simplify the NDR and still discharge its statutory duties.

Response: EOUST has simplified the NDR by working with AOUSC to develop the virtual entry NDR.

23. Timing of Filing NDR

Comment: One comment stated that EOUST should require the new NDR be filed only in cases where the current virtual text entry NDR is not filed 90 days from the date the petition was filed or 45 days after conclusion of the creditors' meeting.

Response: This issue is now moot with the development of the virtual entry NDR.

24. Uniformity

Comment: One comment questioned how the NDR can be uniform when debtors in some states may use state exemptions, which can vary.

Response: Congress mandated the usage of uniform trustee final reports. Varying state exemptions will not alter the uniformity of the NDR form.

25. Virtual Entry NDR

Comment: One comment stated that EOUST should issue a rule authorizing the current practice of filing virtual entry NDR forms for no-asset cases.

Response: EOUST has developed, in conjunction with AOUSC, a virtual entry NDR for no-asset cases.

26. Rewording of NDR

Comment: One comment questioned whether it is appropriate to require trustees to certify on the NDR that ''all funds have been returned'' in cases which are converted and funds have been collected.

Response: EOUST has modified the trustee certification for cases that were converted to read in part, ''all funds have been returned or transferred to the successor trustee.''

27. Courts' Requirements

Comment: One comment stated that the NDR may not meet with courts' requirements.

Response: EOUST has worked with AOUSC in developing the virtual entry NDR to respond to courts' concerns. Therefore, it should meet courts' requirements.

28. Pilot Program

Comment: One comment stated a pilot program should be utilized before making the NDR mandatory in all districts.

Response: The virtual entry NDR eliminates the need for a pilot program.

29. Funding

Comment: One comment stated that Congress should provide funding to enable EOUST to collect the information in the NDR rather than requiring trustees to do so.

Response: This issue is now moot with the development of the virtual entry NDR.

30. Data Transmission

Comment: One comment questioned whether EOUST has considered whether the information from the NDR could be transmitted directly from the courts to EOUST.

Response: The BAPCPA requires trustees to file final reports in every bankruptcy case; EOUST and AOUSC have worked together to simplify the transmission of information.

31. Require Uniform Forms in No-asset Cases Only

Comment: One comment stated that the proposed NDR report fails to balance economy with the burden on the trustee. The comment pointed out that the current practice was simply to file a ''report of no distribution,'' containing no data, in place of a ''formal final report,'' and asks that this practice be continued.

Response: The comment correctly identifies the current practice. However, the Bankruptcy Code requires a ''final report'' in all chapter 7 cases. Section 589b now sets forth the specific data required in a chapter 7 final report and does not distinguish between ''asset'' and ''no asset'' cases. EOUST cannot balance economy and burden by simply ignoring the statutory requirement to provide specific data in *all* chapter 7 final reports.

C. UST Form 101–7–TFR

32. Certification of Tax Returns

Comment: Many comments stated that the requirement that a certification that all tax returns have been filed is impractical and unnecessary.

Response: EOUST concurs and has removed this certification from the TFR.

33. Simplify TFR

Comment: One comment stated that the TFR form should be simplified.

Response: The TFR has already been simplified as much as it can be and still maintain the necessary information for one to understand the trustee's administration of the case and proposed distribution of assets.

34. Exhibit C

Comment: One comment stated that Exhibit C was not provided as an example of what information is required.

Response: The required information is clearly identified in the rule. Exhibit C was designed to allow trustees the greatest flexibility possible to file their own version of claims analysis.

35. Rewording of TFR

Comment: One comment suggested that in section 58.7, replacing the phrase ''before the case may be closed'' with the phrase ''in preparation for closing an asset case.'' This comment also suggested replacing ''bar date'' with ''deadline'' in paragraph 6 of the TFR, along with other various stylistic changes.

Response: EOUST has adopted some of the comment's suggestions and modified the rule and the TFR accordingly. Specifically, section 58.7(a) has been revised to read, ''[a] chapter 7 trustee must complete UST Form 101–7–TFR final report (TFR) in preparation for closing an asset case * * *.'' Paragraph six of the TFR now reads, ''[t]he deadline for filing claims in this case * * *.''

D. UST Form 101–7–NFR

36. Rewording NFR

Comment: One comment suggested amending section 58.7(b) by substituting ''the amounts specified in Fed. R. Bankr. P. 2002(f)(8)'' for ''$1,500'' to avoid the need to update this rule if the bankruptcy rule is changed.

Response: EOUST concurs and has modified the rule accordingly.

37. Authority To Mandate Uniform NFR

Comment: One comment questioned whether EOUST had authority to promulgate a rule requiring a uniform notice of a report. Additionally, this comment stated the form of the notice may not meet with all courts' requirements.

Response: The NFR is integrally connected with the TFR and TDR. One of the primary purposes for a trustee to file a final report is to allow parties in interest to review and comment on the trustee's administration of the case. However, parties in interest do not receive a copy of the final report; they only receive the notice of the final report. Therefore, it is very important that this notice be adequate to inform them of their rights and the trustee's proposed distribution of assets. EOUST notes that AOUSC and EOUST currently have a memorandum of understanding that delineates the format of the NFR. EOUST will work with the courts to accommodate any procedural changes needed to meet a local court's requirements.

38. Court Notice

Comment: One comment questioned whether courts will notice the TFR and application for compensation to interested parties.

Response: Local court practice governs who has the responsibility to send the notice.

E. UST Form 101–7–TDR

39. Redundant Information

Comment: One comment stated that the information required on the TDR is redundant with the information required on the TFR.

Response: The TFR concerns the trustee's proposed distribution, which can change. The TDR is the report that details the trustee's final and actual distribution. Therefore, it is necessary to have the data, while similar, on both reports.

40. Form 1

Comment: One comment questioned the requirement to file same individual property record that was submitted with the TFR.

Response: EOUST recognizes that the Form 1 filed with the TDR is essentially the same Form 1 filed with the TFR. However, it is useful to have the trustee's final account—the TDR—contain a complete record of the administration of the case, including the disposition of property, as well as the flow of funds, in one document. Since the Form 1 is readily available in the trustee's own electronic records, it is a minimal burden to include it with the TDR.

41. Form 2

Comment: One comment questioned the requirement to file receipts and disbursements on the TDR when it would just show the debits to the account of the checks issued per the TFR; the bank statements submitted with the TDR support this process.

Response: The Form 2 filed with the TDR is different from the Form 2 filed with the TFR in one important respect: the Form 2 filed with the TDR shows the actual distribution of funds. The Form 2 filed with the TFR does not contain that information, which is a critical element of the final account. Although the bank statements contain the same information, they are not always available in electronic form or simple to summarize or categorize.

F. Chapters 12 and 13 Uniform Forms

42. Statistics—Value of Assets Abandoned

Comment: One comment stated that in many districts standing trustees do not abandon assets; they merely consent to the stay being lifted. Due to this practice, the ''value of assets abandoned by court order'' will yield invalid statistics if it includes the value of assets when the trustee consents to the stay being lifted.

Response: Trustees in chapter 12 and chapter 13 generally do not abandon assets. However, a court may occasionally direct a trustee to do so, and then the trustee should enter the value of the asset under this data element. In the interests of setting a uniform standard that is reasonable, EOUST defined ''assets abandoned,'' for purposes of reporting on the final report, as those assets abandoned by a court order pursuant to 11 U.S.C. 554(b). This definition does not include instances where a trustee consents to the stay being lifted. Answers to questions such as this about how to complete the Uniform Forms and the meaning of terms or phrases are contained in the instructions that accompany the forms. The instructions are available on EOUST's Web site at *www.usdoj.gov/ust.*

43. Statistics—Value of Assets Exempted

Comment: One comment stated that the ''value of assets exempted'' will be skewed since some debtors claim the value of their exemptions as 100% without stating a value.

Response: As required under the BAPCPA, EOUST is attempting to balance the reasonable needs of the public for information with the need not to unduly burden the standing trustees who must file the final reports. In the interests of setting a uniform standard that is reasonable and would not require

the standing trustee expending significant additional resources, EOUST defined assets exempted as the total value of assets listed as exempt on the debtor's Schedule C, unless revised pursuant to a court order.

44. Statistics—Claims Discharged Without Payment

Comment: One comment stated that the unsecured claims discharged without payment will be skewed since it is unclear whether the amount of general unsecured claims discharged without payment refers to amount of claims filed and not paid or to amount of claims scheduled and not paid.

Response: EOUST will post Instructions on how to complete the final report form on its Web site. Those Instructions clarify that this element is generally the total scheduled unsecured claims plus non-scheduled unsecured claims where a proof of claim was filed, minus payments on unsecured claims, with specified adjustments to that amount.

45. Statistics—Debt Secured by Vehicle

Comment: One comment stated that the debt secured by vehicles will be unreliable since some debtors have vehicles and other collateral securing the loan.

Response: This comment raises a valid point. EOUST will provide further guidance on issues such as this in the Instructions that will be posted on EOUST's Web site.

46. Checks Clearing Bank

Comment: One comment stated that the chapter 13 standing trustee's final report form needs to be modified to allow for the possibility that when a debtor converts from chapter 13 to chapter 7, not all checks have cleared the bank when the standing trustee files the final report.

Response: EOUST will post Instructions on how to complete the final report form on its Web site. Those Instructions clarify that this paragraph may be altered to indicate that not all checks have cleared the bank if the case is converted to another chapter.

47. Questions

Comment: One comment had several questions about how to complete the final report.

Response: EOUST will post Instructions on how to complete the final report on its Web site. Also, individuals may contact EOUST with specific questions about the final report.

48. Cost of Report

Comment: One comment stated that it will cost more than $7.00 to complete the report and that more staff may be necessary.

Response: The estimated increase in costs to the standing trustee of approximately $7.00 per final report is a blended rate based on discussions with standing trustees. Some standing trustees were already entering scheduled claims information and others were not. If the standing trustee had not been entering scheduled claims information, his or her additional costs will be greater than the $7.00.

49. Differences Between Chapter 12 and Chapter 13 Uniform Forms

Comment: One comment questioned whether there were substantive differences between the chapters 12 and 13 final reports. If not, then the comment suggested combining the forms.

Response: There are substantive differences between the four proposed final report forms. Separate forms are required for case trustees and standing trustees because the statutory authority for appointing one or the other differs and the difference is reflected in the language of the final report forms. Further, since chapter 12 and chapter 13 cases are governed by different chapters of the Bankruptcy Code, the final report forms must be separate in order to reflect the correct statutory authority for the information provided.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), The Principles of Regulation. This rule is a not a ''significant regulatory action'' as defined by Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB.)

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the time incurred by private trustees to complete the Uniform Forms. Since most of the information in the chapter 7 Uniform Forms is already collected in most districts, the additional time required to collect the requisite information and to complete the Uniform Forms should be minimal.[4]

In addition, the Uniform Forms will be added to the trustee case management software utilized by chapter 7 trustees. This software is provided to chapter 7 trustees by various banks free of charge in exchange for trustees depositing estate funds in these banks. For chapter 12 and chapter 13 trustees, it is anticipated that an increase in costs will be incurred due to the usage of these chapters 12 and 13 Uniform Forms. However, any associated cost will be an approved administrative expense of a standing trustee's trust operation.[5] It is estimated that the cost to the government for developing these Uniform Forms is approximately $20,000. The estimated cost to develop a system to store information extracted from these forms, and to analyze the data, is approximately $650,000. Over the next several years, the EOUST anticipates utilizing base resources available for information technology to meet the costs associated with developing the Uniform Forms and a system to store the information extracted from the forms. There will be no additional cost to the government. In fact, this rule will reduce the costs to the government of compiling the information submitted by private trustees. Since the Uniform Forms will be data enabled, the current system of manually compiling case closing information will be replaced by a less time intensive automated system.

The benefits of this rule include establishing national uniformity in the final reports submitted by trustees, which will enable Congress, and the general public, to obtain more detailed information regarding bankruptcy cases nationally. This rule will enable Congress and the public to identify, among other things, the amount of debt scheduled in bankruptcy cases, the percentage of claims paid to creditors, the amount of debt discharged, and the value of assets abandoned by trustees.

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

[4] It is estimated that completion of the chapter 7 Uniform Forms will take approximately the same amount of time as the current chapter 7 final reports. Therefore, there should not be an appreciable difference in costs to complete the chapter 7 Uniform Forms as compared to current chapter 7 final report forms.

[5] Please see the Regulatory Flexibility Act section for an explanation of the chapters 12 and 13 Uniform Forms costs.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and certifies that none of the Uniform Forms will have a significant economic impact on a substantial number of small entities. This rule imposes requirements only upon approximately 1,400 trustees. In addition, trustees already submit to the court essentially the same information as that required by this rule though formats vary in judicial districts. This rule simply creates uniform forms for all trustees to use throughout the country rather than local court forms.

For chapter 12 and chapter 13 trustees, it is estimated that there will be an increase in costs in the amount of approximately $7.00 per final report. However, this is less than 1% of chapters 12 and 13 trustees' total operating expenses. Chapters 12 and 13 standing trustees allocate this cost toward an annual budget, which means trustees deduct this cost from funds disbursed from debtors' estates to creditors. Thus, the chapters 12 and 13 Uniform Forms will not have a significant economic impact upon standing trustees.[6]

Paperwork Reduction Act

These forms are associated with an open bankruptcy case. Therefore, the exemption under 5 CFR 1320.4(a)(2) applies.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($123 million in 2005, adjusted annually for inflation). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

28 U.S.C. 589b authorizes the collection of the information in the final reports. As part of the trustee's reporting to the court, the United States Trustee, and creditors concerning the trustee's administration of the bankruptcy estate, the United States Trustee will review the information contained in these reports. The United States Trustee will not share the information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. See 71 FR 59818, 59822 (Oct. 11, 2006), JUSTICE/UST–002, ''Bankruptcy Trustee Oversight Records.'' Providing this information is mandatory under 11 U.S.C. 704.

List of Subjects in 28 CFR Part 58

Bankruptcy; Trusts and Trustees.

■ For the reasons set forth in the preamble, 28 CFR Part 58 is amended as set forth below:

PART 58—[AMENDED]

■ 1. The authority citation for Part 58 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

■ 2. Add section 58.7 to read as follows:

§ 58.7 Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code.

(a) *UST Form 101–7–TFR, Chapter 7 Trustee's Final Report.* A chapter 7 trustee must complete UST Form 101–7–TFR final report (TFR) in preparation for closing an asset case. This report must be submitted to the United States Trustee after liquidating the estate's assets, but before making distribution to creditors, and before filing it with the United States Bankruptcy Court. The TFR must contain the trustee's certification, under penalty of perjury, that all assets have been liquidated or properly accounted for and that funds of the estate are available for distribution. Pursuant to 28 U.S.C. 589b(d), the TFR must also contain the following:

(1) Summary of the trustee's case administration;

(2) Copies of the estate's financial records;

(3) List of allowed claims;

(4) Fees and administrative expenses; and

(5) Proposed dividend distribution to creditors.

(b) *UST Form 101–7–NFR Chapter 7 Trustee's Notice of Trustee's Final Report.* After the TFR has been reviewed by the United States Trustee and filed with the United States Bankruptcy Court, if the net proceeds realized in an estate exceed the amounts specified in Fed. R. Bankr. P. 2002(f)(8), UST Form 101–7–NFR (NFR) must be sent to all creditors as the notice required under Fed. R. Bankr. P. 2002(f). The NFR must show the receipts, approved disbursements, and any balance identified on the TFR, as well as the information required in the TFR's Exhibit D. In addition, the NFR must identify the procedures for objecting to any fee application or to the TFR.

(c) *UST Form 101–7–TDR Chapter 7 Trustee's Final Account, Certification The Estate Has Been Fully Administered and Application of Trustee To Be Discharged.* After distributing all estate funds, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court the trustee's final account, UST Form 101–7–TDR (TDR). The TDR must contain the trustee's certification, under penalty of perjury, that the estate has been fully administered and the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the TDR must also include the following:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Claims asserted;

(6) Claims allowed; and,

(7) Distributions to claimants and claims discharged without payment, in each case by appropriate category.

(d) *UST Form 101–7–NDR Chapter 7 Trustee's Report of No Distribution.* In cases where there is no distribution of funds the case trustee must submit to the United States Trustee and file with the United States Bankruptcy Court UST Form 101–7–NDR (NDR). The NDR must contain the trustee's certification that the estate has been fully administered, that the trustee has neither received nor disbursed any property or money on account of the estate, and that there is no property available for distribution over and above that exempted by law. In addition, the NDR must set forth the

[6] Chapters 12 and 13 case trustees closed less than .001% of chapters 12 and 13 cases in fiscal year 2007.

trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the NDR must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Claims asserted;

(5) Claims scheduled; and,

(6) claims scheduled to be discharged without payment.

(e) *UST Form 101–12–FR–S, Chapter 12 Standing Trustee's Final Report and Account and UST Form 101–13–FR–S, Chapter 13 Standing Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101–12–FR–S for chapter 12 cases or UST Form 101–13–FR–S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification that the estate has been fully administered if not converted to another chapter and a request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) Defaults by the debtor in performance under the plan.

(f) *UST Form 101–12–FR–C, Chapter 12 Case Trustee's Final Report and Account, and UST Form 101–13–FR–C, Chapter 13 Case Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101–12–FR–C for chapter 12 cases, or UST Form 101–13–FR–C for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee's request to be discharged from further duties as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) defaults by the debtor in performance under the plan.

(g) *Mandatory Usage of Uniform Forms.* The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

(1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform Forms as they are posted on EOUST's Web site;

(2) The Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a ''smart form'' meaning the forms are data enabled, unless the court offers an automated process that has been approved by EOUST, such as the virtual NDR event through CM/ECF.

Dated: September 30, 2008.

Clifford J. White, III,

Director, Executive Office for United States Trustees.

[FR Doc. E8–23700 Filed 10–6–08; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2509

RIN 1210–AB22

Amendment to Interpretive Bulletin 95–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that amends Interpretive Bulletin 95–1 to limit the application of the Bulletin to the selection of annuity providers for defined benefit plans. Also appearing in today's **Federal Register** is a final regulation, entitled ''Selection of Annuity Providers—Safe Harbor for Individual Account Plans'', which establishes a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of the Employee Retirement Income Security Act (ERISA). The amendment to Interpretive Bulletin 95–1, as well as the safe harbor for annuity selections, will affect plan sponsors and fiduciaries of individual account plans, and the participants and beneficiaries covered by such plans.

DATES: This final rule is effective on December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters or Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

In 1995, the Department issued Interpretive Bulletin 95–1 (29 CFR 2509.95–1) (the IB), providing guidance concerning the fiduciary standards under Part 4 of Title I of ERISA applicable to the selection of annuity providers for purposes of pension plan benefit distributions. In general, the IB makes clear that the selection of an annuity provider in connection with benefit distributions is a fiduciary act governed by the fiduciary standards of section 404(a)(1), including the duty to act prudently and solely in the interest of the plan's participants and beneficiaries. In this regard, the IB provides that plan fiduciaries must take steps calculated to obtain the safest annuity available, unless under the

circumstances it would be in the interest of the participants and beneficiaries to do otherwise. The IB also provides that fiduciaries must conduct an objective, thorough and analytical search for purposes of identifying providers from which to purchase annuities and sets forth six factors that should be considered by fiduciaries in evaluating a provider's claims paying ability and creditworthiness.

In Advisory Opinion 2002–14A (Dec. 18, 2002) the Department expressed the view that the general fiduciary principles set forth in the IB with regard to the selection of annuity providers apply equally to defined benefit and defined contribution plans. The opinion recognized that, the selection of annuity providers by the fiduciary of a defined contribution plan would be governed by section 404(a)(1) and, therefore, such fiduciary, in evaluating claims paying ability and creditworthiness of an annuity provider, should take into account the six factors set forth in 29 CFR 2509.95–1(c).

During 2005, the ERISA Advisory Council created the Working Group on Retirement Distributions & Options to study, in part, the nature of the distribution options available to participants of defined contribution plans. In November 2005, after public hearings and testimony, the Advisory Council issued a report, entitled Report of the Working Group on Retirement Distributions & Options,[1] concluding that many defined contribution plan distributions tend to be paid out in lump sums which ''expose retirees to a wide range of risks including the possibility of outliving assets, investment losses, and inflation risk.'' The Advisory Council recommended that the Department revise the IB to facilitate the availability of annuity options in defined contribution plans.

The Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280, 120 Stat. 780) was enacted on August 17, 2006. Section 625 of the PPA directs the Secretary to issue final regulations within one year of the date of enactment, clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan is not subject to the safest available annuity standard under the IB and is subject to all otherwise applicable fiduciary standards. On September 12, 2007, the Department published an interim final regulation (72 FR 52004) limiting the scope of Interpretive Bulletin 95–1, relating to the selection of annuity providers, to defined benefit plans, as directed by section 625 of the Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280, 120 Stat. 780). The Department did not receive any comments on that interim final rule and is issuing that rule in final. Set forth below is an overview of the final rule. The Department is also adopting a final regulation, published in today's **Federal Register**, which establishes a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of ERISA.

[1] A copy of the Report can be found on the About EBSA page under the heading ERISA Advisory Council at *http://www.dol.gov/ebsa/publications/AC_1105A_report.html.*

B. Overview of Final Rule

In order to implement the Congressional mandate of section 625 of the PPA and to eliminate any confusion regarding the applicability of the fiduciary standards set forth in IB 95–1 to the selection of annuity providers for the purpose of benefit distributions from individual account plans, the Department is amending the IB to provide that it applies only to the selection of annuity providers for the purpose of benefit distributions from a defined benefit pension plan.

C. Effective Date

This final rule is effective 60 days after the date of publication in the **Federal Register**.

D. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Section 604 of the RFA requires that the agency present a final regulatory flexibility analysis in the publication of the notice of final rulemaking describing the impact of the rule on small entities. The Department has considered the likely impact of the final rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. See notice of final rulemaking appearing in today's **Federal Register** entitled ''Selection of Annuity Providers—Safe Harbor for Individual Account Plans.''

Paperwork Reduction Act

This rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 301 *et seq.*) because it does not contain ''collection of information'' requirements as defined in 44 U.S.C. 3502(3). Accordingly, this final rule is not being submitted to the OMB for review under the Paperwork Reduction Act.

Congressional Review Act

The final rule being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it does not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2509

Employee benefit plans, Pensions.

■ For the reasons set forth in the preamble, the Department amends Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

■ 1. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135. Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Sec. 2509.75–5 also issued under 29 U.S.C. 1002. Sec. 2509.95–1 also issued under sec. 625, Pub. L. 109–280, 120 Stat. 780.

■ 2. Section 2509.95–1 is amended by revising the section heading and paragraph (a) to read as follows:

§ 2509.95–1 Interpretive bulletin relating to the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan.

(a) Scope. This Interpretive Bulletin provides guidance concerning certain fiduciary standards under part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104–1114, applicable to the selection of an annuity provider for the purpose of benefit distributions from a defined benefit pension plan (hereafter ''pension plan'') when the pension plan intends to transfer liability for benefits to an annuity provider. For guidance applicable to the selection of an annuity provider for benefit distributions from an individual account plan see 29 CFR 2550.404a–4.

* * * * *

Signed at Washington, DC, this 29th day of September, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E8–23433 Filed 10–6–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB19

Selection of Annuity Providers—Safe Harbor for Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that establishes a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of the Employee Retirement Income Security Act (ERISA). This regulation will affect plan sponsors and fiduciaries of individual account plans and the participants and beneficiaries covered by such plans. Also appearing in today's **Federal Register** is a final rule amending Interpretive Bulletin 95–1 to limit the application of the Bulletin to the selection of annuity providers for defined benefit plans.

DATES: This final rule is effective on December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters or Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On September 12, 2007, the Department published an interim final regulation (72 FR 52004) limiting the scope of Interpretive Bulletin 95–1, relating to the selection of annuity providers, to defined benefit plans, as directed by section 625 of the Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280, 120 Stat. 780). On the same date, the Department published a proposed rule (72 FR 52021) that would establish a safe harbor for the selection of annuity providers for individual account plans. The Department received 10 comment letters in response to its request for comments. Set forth below is an overview of the final rule and the public comments submitted on the proposed rule. A final rule amending Interpretive Bulletin 95–1 also appears in today's **Federal Register**.

B. Overview of Final Rule and Comments

As discussed below, the substance of the final rule is very similar to the Department's proposed rule. The Department, however, has made changes to the proposed rule that clarify and simplify the safe harbor conditions, consistent with the suggestions of the commenters.

Scope of the Final Rule

Although restructured to simplify and clarify the rule, paragraph (a)(1) of § 2550.404a–4 of the final rule, like the proposed rule, describes the scope of the regulation. As described in paragraph (a)(1) of the final rule, the regulation establishes a safe harbor for satisfying the fiduciary duties under section 404(a)(1)(B) of ERISA in selecting an annuity provider and contract for benefit distributions from an individual account plan. Paragraph (a)(1) also includes a reference to § 2509.95–1 for guidance concerning the selection of annuity providers for defined benefit plans.

Several commenters expressed concerns about a safe harbor structure. Some suggested that a safe harbor is inconsistent with the prudent person standard and that the prudent person standard alone would more effectively reduce impediments to annuities as a

distribution option under an individual account plan.

Other commenters asserted that the regulation should explicitly state that the generally applicable fiduciary standards apply outside the safe harbor and that a fiduciary can discharge its fiduciary duties in ways other than those prescribed by the regulation. In this regard, some commenters expressed concerns that fiduciaries may believe that they must meet the safe harbor conditions in order to satisfy their fiduciary duties if the regulation is not clearly identified as a safe harbor. Others argued that the safe harbor has the effect of establishing a heightened standard of review for the selection and monitoring of annuities that is unduly stringent and has limited relevance to many annuity investment and distribution options.

After careful consideration of these comments, the Department continues to believe that the safe harbor criteria will be useful to many plan fiduciaries when selecting annuity providers and contracts. The Department agrees, however, that a clearer statement concerning the nature of the safe harbor would be beneficial. Accordingly, the Department has modified paragraph (a) of the safe harbor to add new subparagraph (a)(2), clarifying that the regulation does not establish minimum requirements or the exclusive means for satisfying the responsibilities under section 404(a)(1)(B) of ERISA with respect to the selection of an annuity provider or contract for benefit distributions. Further, in an effort to minimize confusion concerning the scope of the safe harbor, as well as to simplify the regulation generally, the Department has eliminated paragraph (b) of the proposal, which discussed the general fiduciary standards of section 404(a)(1).

Safe Harbor

Paragraph (b) of § 2550.404a–4 of the final rule sets forth the conditions of the safe harbor. While the conditions for relief under the final safe harbor regulation are essentially the same as those contained in the proposal, some changes have been made to the ordering and language of the conditions for purposes of clarifying and simplifying the overall regulation.

As with the proposal, the first condition for safe harbor relief is that the plan fiduciary engage in an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities. See paragraph (b)(1) of § 2550.404a–4 of the final rule. Consistent with other guidance from the Department, this process must avoid self dealing, conflicts of interest or other improper influence, and should, to the extent feasible, involve consideration of competing annuity providers.

Paragraph (b)(2) of the final rule, consistent with the proposal, requires that the fiduciary appropriately consider information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract.

Paragraph (b)(3), requires that the fiduciary appropriately consider the cost of the annuity contract, including fees and commissions, in relation to the benefits and administrative services to be provided under the contract. This paragraph is also consistent with the proposal, except that a reference to ''fees and commissions'' has been added to emphasize their importance to the fiduciary's decision making process.

Paragraph (b)(4), also like the proposal, requires that the fiduciary appropriately conclude that, at the time of the selection, the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract.

Paragraph (b)(5) provides that, if necessary, the fiduciary should consult with an appropriate expert or experts for purposes of complying with the requirements of the safe harbor as set forth in paragraph (b). The proposal included as a condition that a fiduciary appropriately determine either that he or she had, at the time of the selection, the appropriate expertise to evaluation the selection of an annuity provider or that the advice of a qualified, independent expert was necessary. A number of commenters expressed concern that this requirement, as framed, would require all employers to engage independent experts to conduct an analysis of the provider and contract, even those that believed they had the requisite knowledge to make a prudent decision. Commenters believed this would be a particularly onerous requirement for small employers. As modified, the regulation makes clear that engaging an independent expert is not required in all cases. Rather, whether and to what extent, if at all, an expert may be needed is a determination to be made by the plan fiduciary taking into account what, if any, assistance the fiduciary needs to satisfy the conditions in paragraphs (b)(1)–(4) of the regulation.

Paragraph (c)(2) of the proposed regulation provided additional guidance concerning what information a fiduciary should consider in meeting the requirements for the safe harbor. A number of commenters argued that the provisions of paragraph (c)(2) were duplicative, confusing and unnecessary. The Department agrees that the paragraph, as part of the safe harbor, is not necessary and, in some instances, may be confusing. Accordingly, the final safe harbor does not include the listing of supplemental considerations set forth in paragraph (c)(2) of the proposal.

The Department believes that the general safe harbor conditions in the final regulation will be more useful for fiduciaries. Further, although an annuity provider's ratings by insurance ratings services are not part of the final safe harbor, in many instances, fiduciaries may want to consider them, particularly if the ratings raise questions regarding the provider's ability to make future payments under the annuity contract. The Department also believes that some information regarding additional protections that might be available through a state guaranty association for an annuity provider also would be useful information to a plan fiduciary, even if limited to that information which is generally available to the public and easily accessible through such associations, state insurance departments, or elsewhere.

Time of Selection

Commenters expressed concern that plan fiduciaries would have to comply with the conditions of the proposed safe harbor merely because they offered investment options through an annuity contract, without regard to whether a participant or plan fiduciary actually exercised the annuity feature of the contract. If so, commenters argued, investment products offered by insurers would be subject to what they perceived as a different, if not higher, fiduciary standard than that applied to the selection of other investment products. The Department does not intend, by virtue of the safe harbor, to establish different fiduciary standards for the selection of investment products. Rather, the safe harbor conditions apply solely to a fiduciary's decision to purchase a distribution annuity for an individual account plan. To clarify this point, the final regulation includes a new paragraph (c) that affords plan fiduciaries flexibility concerning when they must meet the safe harbor conditions in order to take advantage of the safe harbor. Paragraph (c)(1) of the final regulation provides that, under the safe harbor, the time of selection may be the time that the fiduciary selects the annuity provider and contract for distribution of benefits to a specific

participant or beneficiary. Paragraph (c)(2) provides, in the alternative, that the fiduciary may meet the safe harbor conditions when the fiduciary selects an annuity provider to provide annuity contracts at future dates to participants or beneficiaries, provided that the selecting fiduciary periodically reviews the continuing appropriateness of the conclusion that the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract, taking into account the factors described in paragraphs (b)(2), (3) and (5) of § 2550.404a–4 of the final rule. For purposes of paragraph (c)(2), a fiduciary is not required to review the appropriateness of this conclusion with respect to any annuity contract purchased for any specific participant or beneficiary.

C. Effective Date

This final regulation will be effective 60 days after the date of its publication in the **Federal Register**.

D. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Section 604 of the RFA requires that the agency present a final regulatory flexibility analysis of the publication of the notice of final rulemaking describing the impact of the rule on small entities. The Department has considered the likely impact of the final rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 301 *et seq.*), because it does not contain ''collection of information'' requirements as defined in 44 U.S.C. 3502(3). Accordingly, the final rule is not being submitted to the OMB for review under the Paperwork Reduction Act.

Congressional Review Act

This notice of final rulemaking is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and therefore has been transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the final rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Annuities, Employee benefit plans, Fiduciaries, Pensions.

■ For the reasons set forth in the preamble, the Department amends Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

Title 29—Labor

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for Part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Add § 2550.404a–4 to read as follows:

§ 2550.404a–4 Selection of annuity providers—safe harbor for individual account plans.

(a) *Scope.* (1) This section establishes a safe harbor for satisfying the fiduciary duties under section 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104–1114, in selecting an annuity provider and contract for benefit distributions from an individual account plan. For guidance concerning the selection of an

annuity provider for defined benefit plans see 29 CFR 2509.95–1.

(2) This section sets forth an optional means for satisfying the fiduciary responsibilities under section 404(a)(1)(B) of ERISA with respect to the selection of an annuity provider or contract for benefit distributions. This section does not establish minimum requirements or the exclusive means for satisfying these responsibilities.

(b) *Safe harbor.* The selection of an annuity provider for benefit distributions from an individual account plan satisfies the requirements of section 404(a)(1)(B) of ERISA if the fiduciary:

(1) Engages in an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities;

(2) Appropriately considers information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract;

(3) Appropriately considers the cost (including fees and commissions) of the annuity contract in relation to the benefits and administrative services to be provided under such contract;

(4) Appropriately concludes that, at the time of the selection, the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract; and

(5) If necessary, consults with an appropriate expert or experts for purposes of compliance with the provisions of this paragraph (b).

(c) *Time of selection.* For purposes of paragraph (b) of this section, the ''time of selection'' may be either:

(1) The time that the annuity provider and contract are selected for distribution of benefits to a specific participant or beneficiary; or

(2) The time that the annuity provider is selected to provide annuity contracts at future dates to participants or beneficiaries, provided that the selecting fiduciary periodically reviews the continuing appropriateness of the conclusion described in paragraph (b)(4) of this section, taking into account the factors described in paragraphs (b)(2), (3) and (5) of this section. For purposes of this paragraph (c)(2), a fiduciary is not required to review the appropriateness of this conclusion with respect to any annuity contract purchased for any specific participant or beneficiary.

Signed at Washington, DC, this 29th day of September, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E8–23427 Filed 10–6–08; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB17

Statutory Exemption for Cross-Trading of Securities

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). Section 611(g) of the Pension Protection Act of 2006, Public Law No. 109–280, 120 Stat. 780, 972, amended section 408(b) of ERISA by adding a new subsection (19) that exempts the purchase and sale of a security between a plan and any other account managed by the same investment manager if certain conditions are satisfied. Among other requirements, section 408(b)(19)(H) stipulates that the investment manager must adopt, and effect cross-trades in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. This final rule affects employee benefit plans, investment managers, plan fiduciaries and plan participants and beneficiaries.

DATES: *Effective Date:* This final rule is effective February 4, 2009.

FOR FURTHER INFORMATION CONTACT: G. Christopher Cosby or Brian Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8540. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 611(g)(1) of the Pension Protection Act of 2006, Public Law No. 109–280, 120 Stat. 780, 972 (PPA), which was enacted on August 17, 2006, amended ERISA by adding a new section 408(b)(19), which exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of the Act those transactions involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, provided that certain conditions are satisfied.[1] Among other requirements, an investment manager must adopt, and cross-trades must be effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. The policies and procedures must include descriptions of (i) the investment manager's policies and procedures relating to pricing, and (ii) the investment manager's policies and procedures for allocating cross-trades in an objective manner among accounts participating in the cross-trading program.

The investment manager also must designate an individual (a compliance officer) who is responsible for periodically reviewing purchases and sales of securities made pursuant to the exemption to ensure compliance with the foregoing policies and procedures. Following such review, the compliance officer must provide, on an annual basis, a written report describing the steps performed during the course of the review, the level of compliance with the foregoing policies and procedures, and any specific instances of noncompliance. The report must be provided to the plan fiduciary who authorized the cross-trading no later than 90 days following the period to which it relates. Additionally, the written report must notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time and must be signed by the compliance officer under penalty of perjury.

Section 611(g)(3) of the PPA provides that the Secretary of Labor, after consultation with the Securities and Exchange Commission (SEC), shall, no later than 180 days after the date of the enactment of the PPA, issue regulations

[1] Section 611(g)(2) of the PPA added a parallel provision under the Internal Revenue Code of 1986 (Code), section 4975(d)(22), which provides relief from the prohibitions described in section 4975(c) of the Code in connection with the cross-trading of securities. Under Reorganization Plan No. 4 of 1978, effective December 31, 1978 (5 U.S.C. App. 214 (2000)), the authority of the Secretary of the Treasury to issue interpretations regarding section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor, and the Secretary of the Treasury is bound by the interpretations of the Secretary of Labor pursuant to such authority.

regarding the content of the written policies and procedures required to be adopted by an investment manager in order for such manager to qualify for relief under section 408(b)(19) of the Act. Section 611(h) of the PPA provides that the amendments made by section 611 of the PPA shall apply to transactions occurring after the date of enactment of the PPA. In accordance with section 611(g)(3) of the PPA, the Department of Labor (the Department) published an interim final rule on Monday, February 12, 2007 (72 FR 6473) in the **Federal Register** for public comment. The Department received 4 comment letters in response to its request for comments. Submissions are available for review under Public Comments on the Laws & Regulations page of the Department's Employee Benefits Security Administration Web site at *http://www.dol.gov/ebsa.*

Set forth below is an overview of the final rule, along with a discussion of the public comments submitted on the interim final rule.

B. Overview of Final Rule and Comments

1. General

Paragraph (a) of the final rule describes the general requirement of section 408(b)(19)(H) of the Act, which requires investment managers to adopt, and effect cross-trades in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. The policies and procedures must include: (i) A description of the investment manager's pricing policies and procedures, and (ii) the investment manager's policies and procedures for allocating cross-trades in an objective manner among accounts participating in the cross-trading program.

Paragraph (a)(3) of the interim final rule stated that section 408(b)(19)(D) of the Act requires that a plan fiduciary for each plan participating in the cross-trades receive in advance of any cross-trades disclosure regarding the conditions under which the cross-trades may take place in a document that is separate from any other agreement or disclosure involving the asset management relationship. The interim final rule required that the disclosure contain a statement that any investment manager participating in a cross-trading program will have a potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction. In the interest of clarity, the Department has determined to delete this statement from the interim final rule and to amend the policies and procedures under paragraph (b)(3)(i)(D) of the final rule to require that the policies and procedures contain a statement regarding a manager's conflicting loyalties and responsibilities to the parties to the cross-trade transaction and a description of how the investment manager will mitigate such conflicts.[2]

Paragraph (a)(4) of the final rule, like paragraph (a)(4) of the interim final rule, states that the standards set forth in the final rule apply solely for purposes of determining whether an investment manager's written policies and procedures satisfy the content requirements of section 408(b)(19)(H) of the Act. Accordingly, such standards shall not apply in determining whether, or to what extent, the investment manager satisfies the other requirements for relief under section 408(b)(19) of the Act.[3]

2. Content of Policies and Procedures—§ 2550.408(b)–19(b)(3)(i)

Paragraph (b)(3) of the final rule, like the interim final rule, sets forth the content requirements of the written cross-trading policies and procedures that must be adopted by the investment manager, and provided to the plan fiduciary prior to authorizing cross-trading in order for transactions to qualify for relief under section 408(b)(19) of the Act. Paragraph (b)(3)(i) provides that an investment manager's policies and procedures must be fair and equitable to all accounts participating in its cross-trading program and reasonably designed to ensure compliance with the requirements of section 408(b)(19)(H) of the Act.

Several commenters requested additional clarification and guidance concerning the policies and procedures to be followed by investment managers in connection with cross-trades under § 2550.408b–19(b)(3)(i) of the interim final rule. One commenter recommended that the interim final rule be revised to ensure that investment managers will not be subject to cross-trading disclosure requirements that are more extensive than those currently applicable to registered investment advisers to mutual funds under SEC Rule 17a–7, issued under the Investment Company Act of 1940.[4] The commenter argued that many of the provisions of the PPA regarding cross-trading are substantially similar to the provisions of Rule 17a–7, and that the Department and SEC share the same underlying policy considerations regarding cross-trade transactions. Therefore, the commenter concluded that the final rule should be consistent with, and comparable to, the Rule 17a–7 cross-trading provisions and any inconsistencies and additional disclosure obligations should be eliminated from the interim final rule to the extent possible. One commenter opined that, to the extent that some investment managers execute cross-trades on behalf of both mutual funds and pension plans, the imposition of this requirement would prove administratively burdensome insofar as it would require managers to adopt different cross-trading policies and procedures for different clients.

Another commenter suggested that the Department establish a ''safe harbor'' provision in the final rule whereby the adoption of a fair allocation rule for cross-trades that meets the requirements of the Investment Company Act of 1940 would automatically satisfy the requirements of the statutory exemption.

The Department has not adopted the commenters' suggestions in light of the significant differences between Rule 17a–7 and the statutory exemption. The Department recognizes that Congress modeled certain aspects of the cross-trading statutory exemption on Rule 17a–7. For example, both Rule 17a–7 and ERISA section 408(b)(19) limit cross-trades to purchases or sales for cash of securities for which market quotations are readily available. In addition, the transactions must be effected at the independent current market price of the security as described in Rule 17a–7(b) and no brokerage commissions or fees (except for customary transfer fees) may be paid in connection with the transactions.

Rule 17a–7, however, places primary responsibility on the mutual fund's board of directors (a majority of whom must be independent of the mutual fund) to adopt the mutual fund's cross-trading policies and procedures, to make and approve changes as the board deems necessary, and to determine no less frequently than quarterly that all purchases and sales during the preceding quarter were effected in

[2] The policies and procedures containing the disclosure statement must be provided to the plan fiduciary that authorized the plan to participate in the investment manager's cross-trading program in advance of any cross-trade. For a further explanation of this amendment, see the discussion of paragraph (b)(3)(i)(D) under the heading *2. Content of Policies and Procedures—§ 2550.408(b)–19(b)(3)(i),* below.

[3] In this regard, the Department notes that the investment manager's cross-trading program may also be subject to the requirements of applicable Federal securities laws.

[4] 17 CFR 270.17a–7.

compliance with the policies and procedures. In contrast, ERISA section 408(b)(19) requires the investment manager to adopt the written cross-trading policies and procedures and to effect cross-trades in accordance with such procedures.

In recognition of the differences between mutual funds and ERISA-covered employee benefit plans, the statutory exemption requires the investment manager to appoint a compliance officer to periodically review purchases and sales to ensure compliance with the cross-trading policies and procedures adopted by the manager. The statutory exemption also adds the requirement that the investment manager and compliance officer provide detailed, advance and periodic disclosures to the plan fiduciary responsible for authorizing the investment manager to engage in cross-trading on the plan's behalf. In effect, the expanded role of the compliance officer under ERISA section 408(b)(19), coupled with more detailed disclosures to the independent fiduciary, functions in a manner similar to the mutual fund's board of directors under Rule 17a–7. Accordingly, the Department has not adopted the commenters' suggestions.

Another commenter suggested that the language of subsection (b)(3)(i) be revised to read as follows:

> (i) An investment manager's policies and procedures must be reasonably designed (1) to ensure that the transactions entered into pursuant to the policies and procedures are fair and equitable to all accounts participating in its cross-trading program and (2) to ensure compliance with the requirements of section 408(b)(19)(H) of the Act and the requirements of this regulation.

The commenter stated that such a modification would be desirable because the fairness and equity of the policies and procedures would be evaluated, not on the basis of their written terms, but rather on the basis of the results of the cross-trades executed pursuant to such terms. After consideration of the comment, the Department has determined not to adopt the commenter's suggestion. In the Department's view, the suggested modification is inconsistent with section 408(b)(19)(H) of the Act, which requires an investment manager to adopt and effect cross-trades in accordance with written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program.

Paragraph (b)(3)(i)(D) of the interim final rule required an investment manager's cross-trading policies and procedures to contain a description of how the investment manager will mitigate any conflicting loyalties and responsibilities to the parties involved in any cross-trade transaction. Several commenters recommended the deletion of this provision. They suggested that, taken together, the remaining requirements in the interim final rule under § 2550.408b–19(b)(3)(i)—such as the statement of policy describing the criteria that will be applied by the investment manager in determining that the transaction is beneficial to both parties to the cross-trade, the requirement that cross-trades be effected at the independent current market price of the security, and the requirement that cross-trading opportunities be allocated in an objective and equitable manner—are sufficient to mitigate such conflicts, thus obviating the need for this additional procedural requirement.

The Department has not adopted this suggestion. The Department believes that sole reliance upon an independent current market price and an objective allocation method will not reduce the potential for abusive practices such as ''cherry picking'' [5] or ''dumping'' [6] of securities among client accounts in a manner designed to favor one account over the other. The content requirements in § 2550.408(b)–19(b)(3)(i)(A) and (D) address these potential abusive practices by requiring the investment manager to adopt, and adhere to, policies and criteria that are designed to ensure that conflicts of interest are mitigated. These provisions also reinforce the general proposition that, notwithstanding the relief provided in ERISA section 408(b)(19), the Act's general standards of fiduciary conduct apply to an investment manager's decision to cross-trade securities on behalf of any plan. In this regard, the Department has amended paragraph (b)(3)(i)(D) of the final rule to require that the policies and procedures contain a statement regarding a manager's conflicting loyalties and responsibilities [7] to the parties to the cross-trade transaction in addition to a description of how the investment manager will mitigate such conflicts. One commenter suggested that the policies and procedures should do more than simply describe how conflicts will be mitigated. The commenter suggested that the rule be revised to require each proposed transaction to be evaluated by two qualified individuals employed at the investment manager firm, each acting for only one of the plans involved, other than the individuals who made the initial determination to engage in the cross-trade under consideration. According to the commenter, this additional level of review, even though not truly independent because the individuals are employees of the investment manager, would provide additional protection. The Department has not adopted this suggestion because it would add significant costs that could obviate the financial advantages of cross-trading.

The same commenter suggested that the rule should be modified to require that the statement about potential conflicts be prominently displayed in a bold font sufficiently large (at least 14 point) to be distinguishable from the rest of the text included in the disclosure to the independent fiduciary. In addition, the commenter suggested that the Department consider requiring the font size for the entire disclosure statement to be no less than 12 point. The final regulation does not include this suggestion. The Department does not believe that it is necessary to provide a specific format for this statement. Although the Department believes that these statements in the policies and procedures should be prominently displayed in a manner that will bring it to the attention of the independent fiduciary, it does not believe it is necessary to require a specific font size.

3. Role and Responsibility of the Compliance Officer—§ 2550.408b–19(b)(3)(i)(F)

Paragraph (b)(3)(i)(F) of the final rule, like the interim final rule, requires an investment manager's cross-trading policies and procedures to identify the compliance officer responsible for

[5] ''Cherry picking'' of securities refers to a practice where an investment manager with discretion on both sides of a transaction utilizes cross-trading to transfer particular securities from less favored accounts to promote the interests of more favored accounts.

[6] ''Dumping'' of securities refers to a practice where an investment manager with discretion on both sides of a transaction utilizes cross-trading to transfer particular securities to less favored accounts to promote the interests of more favored accounts.

[7] The Department notes the deletion of the word ''potentially'' from the operative language of the interim final rule in the phrase ''potentially conflicting loyalties and responsibilities''. The Department believes that there is an inherent conflict of interests when there is a common investment manager for both sides of a transaction. The Department has taken the position that, where an investment manager has investment discretion with respect to both sides of a cross-trade of securities and at least one side is an employee benefit plan account, a violation of section 406(b)(2) would occur. (See Complaint, *Reich* v. *Strong Capital Management, Inc.*, No. 96–C–0669, E.D. Wis., June 6, 1996). The Department has also taken the position that by representing the buyer on one side and the seller on the other in a cross-trade, a plan fiduciary acts on behalf of parties that have interests adverse to each other. (See Complaint, Strong Capital Management, Inc., supra).

periodically reviewing the investment manager's compliance with section 408(b)(19)(H) of the Act and to include a statement of the compliance officer's qualifications for this position.

Several commenters disagreed with the interim final rule's requirement that each investment manager identify, by name, the compliance officer who will review the cross-trading program and specify that individual's qualifications for the position. One commenter stated that notifying all ERISA clients each time the person with compliance responsibilities changes is burdensome and expensive, given that the individuals performing these compliance duties are replaced from time to time. Such compliance responsibilities, the commenter further stated, are typically a matter of corporate, rather that individual, responsibility.

Another commenter agreed with the Department's position that the compliance officer should be identified and recommended that the compensation paid to the compliance officer should not be materially affected by any trading resulting from the transactions that are reviewed to ensure the compliance officer's independence.

The Department has determined not to amend the regulation to adopt these suggestions. In the Department's view, it is important for the plan fiduciary authorizing a plan to engage in cross-trading to know the identity and qualifications of the compliance officer, since this information could impact the fiduciary's decision to participate in an investment manager's cross-trading program. Moreover, it may be useful for the approving plan fiduciary to know the extent of compliance officer turnover in an investment manager's cross-trading program. The Department believes that the benefits of providing these disclosures to the authorizing plan fiduciary outweigh any associated burdens.

The Department has determined not to amend the rule to provide that the compensation paid to the compliance officer should not be materially affected by any trading resulting from the transactions that are reviewed. In the Department's view, limitations on the compliance officer's compensation are beyond the scope of this regulatory proceeding. The Department believes that section 408(b)(19)(I) of the Act, which requires that the compliance officer sign the annual report to the authorizing plan fiduciary under penalty of perjury, provides a sufficient deterrent to ensure that the compliance officer will act independently in periodically reviewing purchases and sales under the investment manager's cross-trading program.

Most of the commenters requested that the Department clarify the role and responsibilities of the compliance officer under the rule. One commenter suggested that the Department modify the interim final rule to stipulate that, in reviewing the cross-trading transactions of an investment manager who is also registered as an investment adviser with the SEC, the compliance officer may perform his or her duties in a manner consistent with the SEC rules regarding the role of a chief compliance officer under the Investment Advisers Act of 1940 and the Investment Company Act of 1940. According to the commenter, these rules permit a chief compliance officer to rely upon others (including independent third parties, such as independent certified public accounting firms) to carry out the review of the adequacy and effectiveness of the policies and procedures, and do not require a review of every cross-trade. The commenter further suggested that the compliance review mandated by ERISA section 408(b)(19)(I) should be subject to the oversight of the designated compliance officer, who, in turn, would be permitted to delegate responsibility for certain aspects of the review.

The Department has not adopted these suggestions in the final rule. The Department believes that the respective roles of the chief compliance officer under Rule 38a–1 of the Investment Company Act of 1940 (17 CFR 270.38a–1) and the compliance officer under the cross-trading statutory exemption differ in a number of respects. Under the Investment Company Act, the chief compliance officer is approved by, and serves at the pleasure of, the mutual fund's board of directors (including a majority of independent directors) and can be removed by the board at any time. The chief compliance officer also must meet with the independent directors at least once each year. On the other hand, the compliance officer under ERISA section 408(b)(19) is designated by the investment manager, and there is no direct parallel under ERISA to the board of directors' oversight. Moreover, the ERISA compliance officer is responsible for the periodic review of the cross-trades and the preparation of the annual report that must be furnished to the independent fiduciary of each plan participating in the cross-trading program. Although nothing in the final rule prohibits a compliance officer from delegating certain aspects of its responsibilities under ERISA section 408(b)(19)(I), the compliance officer is ultimately responsible for the review under penalty of perjury.

Several of the commenters also proposed that, rather than conducting a review of each individual cross-trade, the compliance officer should be permitted to periodically assess the overall effectiveness of the policies and procedures through a representative sampling of cross-trades. Although the Department did not specifically address this issue in the interim final rule, the Department notes that nothing in the final rule would preclude cross-trades from being reviewed using an appropriate sampling methodology based upon the universe of cross-trades effected by the investment manager under the exemption, provided that the sample methodology is disclosed in the investment manager's policies and procedures. The Department expects auditors to ensure that the sample selected is an appropriate representation of the total universe of transactions engaged in over the entire test period.

4. Compliance Officer's Review—§ 2550.408b–19(b)(3)(i)(G)

In order to inform plan fiduciaries regarding the scope of compliance reviews conducted by the compliance officer, paragraph (b)(3)(i)(G) of the final rule, like the interim final rule, requires the policies and procedures to contain a statement describing whether such review is limited to compliance with the policies and procedures required pursuant to ERISA section 408(b)(19)(H), or whether such review extends to any determinations regarding the overall level of compliance with the other requirements of section 408(b)(19) of the Act.

Two commenters expressed concern about this provision. One commenter stated that a compliance officer's performance of any review responsibilities beyond assessing compliance with the requirements of ERISA section 408(b)(19)(H) would be inconsistent with the extent of a compliance officer's duties under the Investment Advisers Act of 1940. Accordingly, the commenter recommended that the interim final rule be revised to limit the scope of the officer's review to the narrower statutory provision. Another commenter noted that the provision permitting the compliance officer to review adherence to the totality of the requirements contained in section 408(b)(19) is unnecessary and should be deleted. According to the commenter, the requirement that the policies and procedures include a statement that the review does not cover more than is

required implies that the scope of the review is somehow deficient.

The Department continues to believe that disclosure of the scope of the compliance officer's review is an important consideration that may influence an authorizing fiduciary's determination of whether to participate, or continue participation, in the investment manager's cross-trading program. It also places the approving plan fiduciary on notice of the extent to which it may rely on the compliance officer's review in performing its monitoring duties. Nonetheless, the Department did not intend for such a statement to imply that a review only for compliance with the policies and procedures described in section 408(b)(19)(H), as opposed to all requirements of the statutory exemption, would be deficient. Therefore, the Department has modified the final rule to require that the policies and procedures only provide a statement regarding the scope of the compliance officer's review. In order to ensure that authorizing plan fiduciaries are aware that the other conditions of the statutory exemption also must be satisfied, the final rule has been modified further to require that the policies and procedures include a statement that the ERISA cross-trading statutory exemption requires satisfaction by the investment manager of a number of objective conditions in addition to the requirements that the investment manager adopt and effect cross-trades in accordance with written cross-trading policies and procedures.

5. Definition of Investment Manager—§ 2550.408b–19(c)(4)

Like the interim final rule, paragraph (c)(4) of the final rule defines the term ''investment manager'' by cross-referencing the definition of such term in section 3(38) of the Act. One commenter stated that the final rule would be a suitable regulatory vehicle for the Department to clarify the term ''investment manager,'' noting that the definition in section 3(38) of the Act excludes trustees. This commenter maintained that the Department has taken the view that the exclusion of trustees generally from the section 3(38) definition was not intended to exclude bank trustees, such as collective trust trustees or an institutional bank trustee managing assets on a separate account basis. Accordingly, the commenter requested guidance from the Department that would enable trustees of bank collective trusts to use the cross-trading exemption if the other conditions of the statutory exemption are met.

The Department reiterates that the term ''investment manager,'' as used in Title I of ERISA,[8] is defined in ERISA section 3(38) to mean, in pertinent part, any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2))—

(A) Who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940[, 15 U.S.C. 80b–1 *et seq.*]; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act[, 15 U.S.C. 80b–3a(a)], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary; (iii) is a bank, as defined in that Act; or (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

The Department has not adopted this suggestion in the final rule because it is inconsistent with the statutory definition. However, the Department notes that the parenthetical expression ''other than a trustee or named fiduciary'' in ERISA section 3(38) does not preclude a trustee from serving as an investment manager, so long as the trustee meets the requirements set forth in subsections (A), (B), and (C) of ERISA section 3(38) and is formally appointed as an investment manager by a named fiduciary. (See DOL Advisory Opinion 77–69/70).

6. Additional Comments

Cross-Trades With Investment Manager's Affiliates

Several commenters requested that the Department clarify the rule by expressly permitting cross-trades between the account of an investment manager and the account of an investment manager's affiliate. One commenter noted that many cross-trading programs cover trades between accounts of affiliated managers. For example, a financial institution may have separate investment adviser subsidiaries managing mutual funds and separate account investments, and a trust company subsidiary managing collective investment funds. To facilitate cross-trading with client plans, the commenter urged the Department to clarify that the purchase and sale of a security between accounts managed by the ''same investment manager'' in ERISA section 408(b)(19) includes both a single investment manager, as well as affiliated investment managers, and that the term ''affiliate'' encompasses an entity controlling, controlled by, or under common control with, the investment manager. Another commenter stated that, absent such clarification, cross-trades involving plan assets executed between the accounts of an investment manager and its affiliate could be construed to violate ERISA section 406(b)(2).

In the Department's view, securities trades executed between an account managed by an investment manager and an account managed by an affiliate of such manager are beyond the scope of the statutory exemption. The Department believes that the language of ERISA section 408(b)(19), which provides relief for any transaction described in ERISA sections 406(a)(1)(A) and 406(b)(2) ''involving the purchase and sale of a security between accounts managed by the same investment manager,'' only applies to the purchase and sale of a security between accounts managed by the same investment management entity. In this regard, the Department notes that an investment manager's exercise of discretionary authority, on behalf of an account it manages, to effect a purchase or sale of a security with another account over which an affiliate of the manager exercises discretionary authority would not, in itself, constitute a violation of 406(b)(2) of ERISA. However, a violation of ERISA's prohibited transaction provisions could arise in operation if, in fact, there was an agreement or understanding between the affiliated entities to favor one managed account at the expense of the other account in connection with the transaction. Finally, the Department notes that individual portfolio managers employed by the same investment management entity may execute cross-trades in accordance with the relief provided by the statutory exemption.

Quarterly Report Under ERISA Section 408(b)(19)(F) and Annual Report Under ERISA Section 408(b)(19)(I)

One commenter noted that the regulation did not discuss the investment manager's quarterly report required under ERISA section 408(b)(19)(F). The commenter requested that the Department include a provision in the final rule clarifying that the actual names of the counterparties do not have to be provided in the quarterly report,

[8] See ERISA sections 402(c)(3) and 403(a)(2) regarding the appointment of an investment manager.

but that such parties could be identified by type, *i.e.*, endowment, insurance company account, mutual fund, or other institutional account. This commenter expressed concern that without this clarification, investment managers may violate confidentiality provisions in client contracts. The Department notes that the interim final rule addressed the content of the written cross-trading policies and procedures that must be adopted by the investment manager in order to comply with the requirements of the statutory exemption. However, the interim final rule did not address any issues related to the quarterly report. In this regard, the Department notes that the quarterly report described in section 408(b)(19)(F) of the Act requires detailed disclosures of all cross-trades executed by the manager during the quarter, including the parties involved in the cross-trade. In light of the language in the statutory exemption, the Department does not concur with the commenter's suggested clarification.

Another commenter stated that the rule should be expanded to address the compliance officer's annual report. The commenter noted that the statutory language requiring the report to provide notification to the plan fiduciary of its right to terminate participation in the cross-trading program at any time is very important. Therefore, the commenter suggested that the opt out language should be prominent and in a bold font sufficiently large (at least 14 point) to be distinguishable from the rest of the text included in the disclosure. Although the Department believes that the language in the annual report regarding a fiduciary's right to terminate its participation in the cross-trading program at any time should be prominently displayed in a manner that will bring it to the attention of the independent fiduciary, it does not believe that it is necessary to require a specific font size.

Consequences of Non-Compliance With Policies and Procedures

One commenter asked the Department to clarify that non-compliance with the policies and procedures mandated by the interim final rule would not, in itself, invalidate the applicability of the statutory exemption to either a specific cross-trade transaction or to any cross-trades undertaken by a particular investment manager. The commenter expressed the view that Congress did not intend that non-compliance with the policies and procedures, in itself, would cause the exemption not to be available for cross-trades by a particular manager, provided that the non-compliance did not result in a failure to conform with the conditions stipulated in ERISA section 408(b)(19)(A) through (G). To support this view, the commenter noted that the annual compliance report mandated in ERISA section 408(b)(19)(I) requires only that instances of non-compliance with the investment manager's policies and procedures be reported to the plan fiduciary authorizing the cross-trades. Following receipt of this report, the authorizing fiduciary would then make a determination as to whether the non-compliance warrants further action (such as termination of the authorization).

In response to the commenter's suggestion, the Department notes that ERISA section 408(b)(19)(H) requires that, in order for the exemption to apply, the investment manager must adopt, and cross-trades must be effected in accordance with, written cross-trading policies and procedures. It is the Department's view that the exemption would be unavailable for any transaction that was not effected in accordance with cross-trading policies and procedures that satisfy the requirements of section 408(b)(19)(H) and the regulations issued thereunder. The Department is of the further view that reporting instances of non-compliance serves as a notice to the plan fiduciary but does not relieve the investment manager from the responsibility to comply with the requirements of the statutory exemption. However, individual instances of non-compliance with the policies and procedures by the investment manager would not, in itself, render the statutory exemption inapplicable to the investment manager's entire cross-trading program, provided that the other cross-trading transactions met all of the requirements of section 408(b)(19) of the Act.

Application of Final Rule to Pooled Investment Vehicles

Several commenters suggested modification of the minimum plan asset size required for participation in the manager's cross-trading program by clarifying that the cross-trading exemption is available to a common or collective trust or other pooled investment vehicle where at least one participating plan has assets of at least $100 million. One commenter stated that this clarification should also extend to master-feeder trust arrangements, where the only investors in the ''master'' collective trust (*i.e.*, the entity that would engage in cross-trades) are other collective trusts. Under this approach, subject to the requirement that one of the participating ''feeder'' trusts includes a plan with assets of at least $100 million, the entire master trust would be permitted to cross-trade with the consent of an authorizing fiduciary of the $100 million plan. According to the commenter, absent such clarification, a plan that meets the $100 million minimum asset requirement may not be able to utilize the cross-trading exemption where it participates in such a collective trust or other pooled investment vehicle.

Another commenter suggested that the final regulation should clarify that a pooled fund is eligible to use the statutory exemption if ERISA-covered plans with more than $100 million in assets hold 50 percent or more of the units of such pooled investment fund. Plans would have the option not to invest in pooled investment funds that intend to engage in cross-trading or to withdraw from the fund if the cross-trading program begins after the plan's initial investment. This commenter stated that it believes the Department has sufficient regulatory authority to create a pooled fund rule.

Another commenter suggested that cross-trades should be allowed (i) by plans meeting a $50 million threshold and (ii) between plans maintained by employers in the same controlled group, as long as ERISA plans within the same controlled group meet the minimum threshold requirements in the aggregate.

The Department has not adopted the commenters' suggestions, because it believes that the proposed changes are inconsistent with ERISA section 408(b)(19)(E), which requires ''each plan participating in the transaction [to have] assets of at least $100,000,000.'' The only exception to this requirement is for master trusts containing the assets of plans maintained by employers in the same controlled group, in which case the master trust must have assets of at least $100,000,000. In this regard, the Department notes that pooled investment vehicles comprised solely of plans with assets of at least $100 million may take advantage of the statutory exemption.

Minimum Asset Size Test

Several commenters requested that the Department modify the procedure contained in the interim final rule for verifying that any plan (or master trust containing the assets of plans maintained by employers in the same controlled group) participating in a manager's cross-trading program has assets of at least $100 million. Specifically, the interim final rule at section 2550.408b–19(b)(3)(i)(C) provided that ''[a] plan or master trust will satisfy the minimum asset size

requirement as to a transaction if it satisfies the requirement upon its initial participation in the cross-trading program and on a quarterly basis thereafter.'' The commenters expressed the view that annual, rather than quarterly, verification of the minimum asset size requirement would be more practical for investment managers and plan sponsors.

One commenter pointed out that many managers obtain updated information about their clients only on an annual basis. Moreover, cross-trading managers who oversee only a portion of a plan's assets may not have continuous access to information on the client plan's overall asset level.

Another commenter suggested that the Department adopt an alternative means for satisfying the minimum asset test. Under such an approach, a plan fiduciary would be required to certify satisfaction of the $100 million threshold at the inception of its participation in the cross-trading program, and to inform the investment manager if the asset level subsequently falls below the minimum asset requirement.

In response to these comments, the Department has modified the rule to provide that a plan's minimum asset size may be verified on an annual basis.

Individual Exemptive Relief for Smaller Plans

One commenter requested that the Department issue an administrative class exemption for plans with assets below $100 million. This commenter stated that plans below the $100 million requirement may have less bargaining power to obtain lower commissions from brokers and potentially could benefit more from cross-trading relative to larger plans.

The Department wishes to take the opportunity to state that enactment of the statutory exemption for cross-trading does not foreclose future consideration of administrative relief if the required findings under section 408(a) of ERISA can be made.

Effective Date

The Department recognizes that implementation issues may arise concerning the effect of the final rule on investment managers that adopted cross-trading policies and procedures and made disclosures to, and obtained authorizations from, independent fiduciaries in reliance on the interim final regulation. After considering this issue, the Department has determined to make the final regulation effective 120 days after publication. Also, it is the view of the Department that an investment manager that obtained a fiduciary's authorization, in accordance with section 408(b)(19)(D) of the Act, prior to the effective date of this final regulation and based on compliance with the interim final regulation, will not be required to obtain a re-authorization following disclosures that reflect this final regulation.

C. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rule-making describing the impact of the rule on small entities and seeking public comment on such impact.

Because this rule initially was issued as an interim final rule, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct an initial regulatory flexibility analysis. Nevertheless, the Department has considered the likely impact of the rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. For purposes of this discussion, the Department deemed a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the interim final rule solicited comments on the information collection included in the rule. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the interim final rule, for OMB's review. No public comments were received that specifically addressed the paperwork burden analysis of the information collection.

OMB approved the ICR on April 27, 2007 under control number 1210–0130, which expires on April 30, 2010. This final rule does not implement any substantive or material change to the information collection; therefore, no change is made to the ICR, and no further review is requested of OMB at this time. The burden cost and hours were adjusted to reflect updated wage rates and a small increase in the estimated number of investment managers who are expected to engage in cross-trading.

A copy of the ICR may be obtained by contacting the PRA addressee shown below.

PRA Addressee: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. ICRs submitted to OMB are

also available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

This regulation implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of ERISA, as added by section 611(g) of the PPA. As described earlier in this preamble, section 611(g)(1) of the PPA created a new statutory exemption, added to section 408(b) of ERISA as subsection 408(b)(19), that exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of ERISA cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager, provided that certain conditions are satisfied.

The information collection provisions of the regulation safeguard plan assets by ensuring that important information about an investment manager's cross-trading program is provided to plan fiduciaries prior to their decision whether to begin or continue participation in the cross-trading program. The information collection also assists in ensuring that investment managers relying on the statutory exemption effect cross-trades in accordance with the criteria described in the policies and procedures.

Under the final regulation, an investment manager would be required to develop written cross-trading policies and procedures that meet the regulation's content requirements and to disclose them to plan fiduciaries prior to their deciding whether to invest plan assets in an account participating in the cross-trading program. The regulation would provide that the policies and procedures for cross-trading under the new statutory exemption must include detailed explanations and descriptions of certain aspects of the investment manager's cross-trading program, as explained earlier in this preamble. This information collection, therefore, constitutes third-party disclosures between an investment manager and plan fiduciaries.

Annual Hour Burden

Based on data derived primarily from the Form 5500 Annual Return/Report of Employee Benefit Plan filings for the 2001 to 2005 plan years, which is the most recent reliable data available, the Department estimates that approximately 2,200 [9] plans would be eligible to participate in cross-trading programs. Further, the Department estimates that approximately 1,800 [10] investment managers would serve as investment managers for the assets of such eligible plans.[11] On average, the Department estimates that each of the 1,800 investment managers will manage assets of nine plans. Assuming that 90 percent of the 1,800 investment managers have cross-trading programs, investment managers would be required to provide about 15,000 initial disclosures of cross-trading policies and procedures to plan fiduciaries (1,800 investment managers * 9 plans each * 90 percent = 14,580 initial disclosures). The Department assumes that each investment manager would require 10 hours of a legal professional's time to develop written policies and procedures in the first year.[12] For the 90 percent of the 1,800 investment managers that develop cross-trading programs, the Department estimates an initial annual hour burden of a little over 16,000 hours.

Each investment manager would be required to provide the cross-trading policies and procedures as an initial disclosure to each plan. The Department assumes that the initial disclosure will be provided in writing to provide a desired formality of compliance. Thus, the Department estimates that investment managers will be required to provide about 15,000 initial plan disclosures to plan fiduciaries (90 percent of 1,800 investment managers, times nine plans) in the first year in which the exemption is effective. The Department assumes that 3 (three) minutes of clerical time per plan disclosure will be needed to gather the required information, collate and package the information for distribution, and ensure that the information is distributed in a manner that will create a record of delivery, for a total of about 730 hours of clerical time.

In years subsequent to the first year of applicability, the Department estimates that modified policies and procedures will be written by investment managers whose policies and procedures have changed, and new policies and procedures will be written by investment managers that inaugurate new cross-trading programs. For purposes of burden analysis, the Department has assumed that the number of investment managers that either change or newly adopt cross-trading policies and procedures in a subsequent year will equal 14 percent of the investment managers that currently have cross-trading policies and procedures, or about 230 managers. These 230 investment managers will each spend 10 hours of a legal professional's time to develop new written policies and procedures, for a total of about 2,300 hours each year. These investment managers are also estimated to distribute their new written policies and procedures to 2,000 plan fiduciaries. This would require about 100 hours of clerical time.

In total, the initial disclosure of cross-trading policies and procedures is estimated to require about 17,000 hours in the first year (16,200 hours of legal professional's time + 729 hours of clerical time = 16,929 hours total) and about 2,400 hours in each subsequent year (2,268 hours of legal professional's time + 102 hours of clerical time = 2,370 hours total). The equivalent costs of these hours are $1,735,000 and $243,000, respectively.[13]

Annual Cost Burden

The only additional costs arising from this information collection derive from the direct costs of distribution.

The Department believes that initial disclosure of the investment manager's written policies and procedures to plan fiduciaries eligible to participate in the investment manager's cross-trading program will be prepared in paper form and distributed by mail delivery service, courier or some other means of distribution that will create a record of delivery. For the initial disclosures to the plan fiduciaries assumed to receive such disclosure, the Department assumes a distribution cost of $4.00 per plan. This includes the actual cost of distribution, plus any overhead costs associated with printing the documentation. Given that about 90% of the approximately 1,800 investment managers are estimated to engage in cross-trading and that each of them

[9] All numbers in this burden analysis, apart from the hourly wage rates, have been rounded either to the nearest thousand or the nearest hundred, as appropriate.

[10] Under the statutory exemption, ''each plan participating in the cross-trading transaction [must have] assets of at least $100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7)), the master trust has assets of at least $100,000,000.'' ERISA section 408(b)(19)(E).

[11] Because a plan of this size is likely to use the services of more than one investment manager to invest its assets, the Department has assumed that some of the eligible plans will have assets invested under more than one cross-trading program.

[12] The Department assumed that investment managers, which are large, sophisticated financial institutions, will use existing in-house resources to prepare the information and disclosures.

[13] Hourly wage estimates for purposes of deriving cost equivalents were based on data of the Occupational Employment Survey (March 2005, Bureau of Labor Statistics) and the Employment Cost Trends (Sept. 2006, Bureau of Labor Statistics). The resulting hourly wage rates were $106, including both wages and benefits, for legal professionals and $25, similarly including both wages and benefits, for clerical personnel.

manages on average nine plans, investment managers would have to prepare a little less than 15,000 disclosures to plan fiduciaries. The total initial annual cost burden for distributing the required notice amounts to $58,000.

In years subsequent to the first year of applicability, policies and procedures will only have to be distributed by investment managers that develop new policies and procedures. For purposes of burden analysis, the Department has assumed that the number of investment managers that will do so in a subsequent year will be equal to 14 percent of existing investment managers with cross-trading programs, or about 230 managers.

The distribution of these new written policies and procedures in a subsequent year to plan fiduciaries will require material and postage costs of $4.00 per plan. Assuming that, on average, the assets of about nine plans are managed by each investment manager, this would require a little more than 2,000 disclosures annually and about $8,200 annually in materials and postage costs.

In total, the initial disclosure of policies and procedures is estimated to require about $58,000 for materials and postage in the first year and about $8,200 in each subsequent year.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Statutory Exemption for Cross-Trading of Securities.

OMB Number: 1210–0130.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 1,600 (first year); 230 (subsequent years).

Responses: 15,000 (first year); 2,000 (subsequent years).

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 17,000 (first year); 2,400 (subsequent years).

Estimated Total Annual Burden Cost: $58,000 (first year); $8,200 (subsequent years).

Congressional Review Act

The final rule being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it does not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the final rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million or more, adjusted for inflation, on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

■ For the reasons set forth above, the Department amends 29 CFR part 2550 as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Revise § 2550.408b–19 to part 2550 to read as follows:

§ 2550.408b–19 Statutory exemption for cross-trading of securities.

(a) *In General.* (1) Section 408(b)(19) of the Employee Retirement Income Security Act of 1974 (the Act) exempts from the prohibitions of section 406(a)(1)(A) and 406(b)(2) of the Act any cross-trade of securities if certain conditions are satisfied. Among other conditions, the exemption requires that the investment manager adopt, and effect cross-trades in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include:

(i) A description of the investment manager's pricing policies and procedures; and

(ii) The investment manager's policies and procedures for allocating cross-trades in an objective manner among accounts participating in the cross-trading program.

(2) Section 4975(d)(22) of the Internal Revenue Code of 1986 (the Code) contains parallel provisions to section 408(b)(19) of the Act. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 214 (2000 ed.), transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. Therefore, all references herein to section 408(b)(19) of the Act should be read to include reference to the parallel provisions of section 4975(d)(22) of the Code.

(3) Section 408(b)(19)(D) of the Act requires that a plan fiduciary for each plan participating in the cross-trades receive in advance of any cross-trades

disclosure regarding the conditions under which the cross-trades may take place, including the written policies and procedures described in section 408(b)(19)(H) of the Act. This disclosure must be in a document that is separate from any other agreement or disclosure involving the asset management relationship. For purposes of section 408(b)(19)(D) of the Act, the policies and procedures furnished to the authorizing fiduciary must conform with the requirements of this regulation.

(4) The standards set forth in this section apply solely for purposes of determining whether an investment manager's written policies and procedures satisfy the content requirements of section 408(b)(19)(H) of the Act. Accordingly, such standards do not determine whether the investment manager satisfies the other requirements for relief under section 408(b)(19) of the Act.

(1)(b) *Policies and Procedures. In General.* This paragraph specifies the content of the written policies and procedures required to be adopted by an investment manager and disclosed to the plan fiduciary prior to authorizing cross-trading in order for transactions to qualify for relief under section 408(b)(19) of the Act.

(2) *Style and Format.* The content of the policies and procedures required by this paragraph must be clear and concise and written in a manner calculated to be understood by the plan fiduciary authorizing cross-trading. Although no specific format is required for the investment manager's written policies and procedures, the information contained in the policies and procedures must be sufficiently detailed to facilitate a periodic review by the compliance officer of the cross-trades and a determination by such compliance officer that the cross-trades comply with the investment manager's written cross-trading policies and procedures.

(3) *Content* (i). An investment manager's policies and procedures must be fair and equitable to all accounts participating in its cross-trading program and reasonably designed to ensure compliance with the requirements of section 408(b)(19)(H) of the Act. Such policies and procedures must include:

(A) A statement of policy which describes the criteria that will be applied by the investment manager in determining that execution of a securities transaction as a cross-trade will be beneficial to both parties to the transaction;

(B) A description of how the investment manager will determine that cross-trades are effected at the independent ''current market price'' of the security (within the meaning of section 270.17a–7(b) of Title 17, Code of Federal Regulations and SEC no-action and interpretative letters thereunder) as required by section 408(b)(19)(B) of the Act, including the identity of sources used to establish such price;

(C) A description of the procedures for ensuring compliance with the $100,000,000 minimum asset size requirement of section 408(b)(19). A plan or master trust will satisfy the minimum asset size requirement as to a transaction if it satisfies the requirement upon its initial participation in the cross-trading program and on an annual basis thereafter;

(D) A statement that any investment manager participating in a cross-trading program will have conflicting loyalties and responsibilities to the parties involved in any cross-trade transaction and a description of how the investment manager will mitigate such conflicts;

(E) A requirement that the investment manager allocate cross-trades among accounts in an objective and equitable manner and a description of the allocation method(s) available to and used by the investment manager for assuring an objective allocation among accounts participating in the cross-trading program. If more than one allocation methodology may be used by the investment manager, a description of what circumstances will dictate the use of a particular methodology;

(F) Identification of the compliance officer responsible for periodically reviewing the investment manager's compliance with section 408(b)(19)(H) of the Act and a statement of the compliance officer's qualifications for this position;

(G) A statement that the cross-trading statutory exemption under section 408(b)(19) of the Act requires satisfaction of several objective conditions in addition to the requirements that the investment manager adopt and effect cross-trades in accordance with written cross-trading policies and procedures; and

(H) A statement which specifically describes the scope of the annual review conducted by the compliance officer.

(ii) Nothing herein is intended to preclude an investment manager from including such other policies and procedures not required by this regulation as the investment manager may determine appropriate to comply with the requirements of section 408(b)(19).

(c) *Definitions.* For purposes of this section:

(1) The term *''account''* includes any single customer or pooled fund or account.

(2) The term *''compliance officer''* means an individual designated by the investment manager who is responsible for periodically reviewing the cross-trades made for the plan to ensure compliance with the investment manager's written cross-trading policies and procedures and the requirements of section 408(b)(19)(H) of the Act.

(3) The term *''plan fiduciary''* means a person described in section 3(21)(A) of the Act with respect to a plan (other than the investment manager engaging in the cross-trades or an affiliate) who has the authority to authorize a plan's participation in an investment manager's cross-trading program.

(4) The term *''investment manager''* means a person described in section 3(38) of the Act.

(5) The term *''plan''* means any employee benefit plan as described in section 3(3) of the Act to which Title I of the Act applies or any plan defined in section 4975(e)(1) of the Code.

(6) The term *''cross-trade''* means the purchase and sale of a security between a plan and any other account managed by the same investment manager.

Signed at Washington, DC, this 29th day of September, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E8–23434 Filed 10–6–08; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2550 and 2578

RIN 1210–AB16

Amendments to Safe Harbor for Distributions From Terminated Individual Account Plans and Termination of Abandoned Individual Account Plans To Require Inherited Individual Retirement Plans for Missing Nonspouse Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule amending regulations under the Employee Retirement Income Security Act of 1974 that provide guidance and a fiduciary safe harbor for the distribution of benefits on behalf of participants or beneficiaries in

terminated and abandoned individual account plans. The Department is amending these regulations to reflect changes enacted as part of the Pension Protection Act of 2006 to the Internal Revenue Code of 1986 (the Code), under which a distribution of a deceased plan participant's benefit from an eligible retirement plan may be directly transferred to an individual retirement plan established on behalf of the designated nonspouse beneficiary of such participant. Specifically, the amended regulations require as a condition of relief under the fiduciary safe harbor that benefits for a missing, designated nonspouse beneficiary be directly rolled over to an individual retirement plan that fully complies with Code requirements. This final rule will affect fiduciaries, plan service providers, and participants and beneficiaries of individual account pension plans.

DATES: This final rule is effective November 6, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends two regulations under the Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act) that facilitate the termination of individual account plans, including abandoned individual account plans, and the distribution of benefits from such plans. The first regulation, codified at 29 CFR 2550.404a–3, provides plan fiduciaries of terminated plans and qualified termination administrators (QTAs) of abandoned plans with a fiduciary safe harbor for making distributions on behalf of participants or beneficiaries who fail to make an election regarding a form of benefit distribution, commonly referred to as missing participants or beneficiaries. The second regulation, codified at 29 CFR 2578.1, establishes a procedure for financial institutions holding the assets of an abandoned individual account plan to terminate the plan and distribute benefits to the plan's participants or beneficiaries, with limited liability.[1] Appendices to these two regulations contain model notices for notifying participants or beneficiaries of the plan's termination and distribution options.

The safe harbor regulation provides that both a fiduciary and a QTA will be deemed to have satisfied ERISA's prudence requirements under section 404(a) of the Act if the conditions of the safe harbor are met with respect to the distribution of benefits on behalf of missing participants from terminated individual account plans.[2] In general, the regulation provides that a fiduciary or QTA qualifies for the safe harbor if a distribution is made to an individual retirement plan within the meaning of section 7701(a)(37) of the Code. See § 2550.404a–3(d)(1)(i). However, in April 2006, when the Department published this safe harbor regulation, a distribution of benefits from an individual account plan to a nonspouse beneficiary was not considered an eligible rollover distribution under the provisions of section 402(c) of the Code and, therefore, could not be rolled over into an individual retirement plan.[3] As a result, the safe harbor regulation mandated, among other requirements, the distribution of benefits on behalf of a missing nonspouse beneficiary to an account that was not an individual retirement plan. See § 2550.404a–3(d)(1)(ii). Consequently, such distributions were subject to income tax and mandatory tax withholding in the year distributed into the account.[4]

The Pension Protection Act of 2006, Public Law 109–280, (PPA) changed the characterization of certain distributions from tax exempt plans and trusts to permit such distributions to qualify for eligible rollover distribution treatment.[5] Section 829 of the PPA amended section 402(c) of the Code to permit the direct rollover of a deceased participant's benefit from an eligible retirement plan to an individual retirement plan established on behalf of a designated nonspouse beneficiary.[6] These rollover distributions would not trigger immediate income tax consequences and mandatory tax withholding for the nonspouse beneficiary.

In light of the PPA's changes to the Code allowing a rollover distribution on behalf of a nonspouse beneficiary into an inherited individual retirement plan with the resulting deferral of income tax consequences, the Department, on February 15, 2007, published in the **Federal Register** an interim final rule amending its regulatory safe harbor for distributions from a terminated individual account plan, including an abandoned plan, and invited interested parties to comment.[7] The Department received two comments, neither of which related directly to the interim final rule; both comments pertain to the scope and impact of section 402(c) of the Code, as amended by section 829 of the PPA. Accordingly, the interim final rule amending 29 CFR 2550.404a–3 and 29 CFR 2578.1 is adopted as a final rule without change. In this regard, however, the Department notes that section 410(a) of the PPA amended section 4050 of ERISA to permit terminating plans not subject to the PBGC insurance program, such as defined contribution plans, to transfer the benefits of missing participants to the Pension Benefit Guaranty Corporation (PBGC). Section 410(c) of the PPA provides that the amendments to section 4050 would be effective for benefit distributions made after the PBGC prescribes final rules implementing such amendments. The Department will further review whether, and to what extent, changes to 29 CFR 2550.404a–3 and 29 CFR 2578.1 would be appropriate following PBGC regulations pursuant to section 4050 of ERISA.

B. Overview of Final Rule

The final rule amends the Department's regulatory safe harbor for distributions from terminated (including abandoned) individual account plans to require that a deceased participant's benefit be directly rolled over to an inherited individual retirement plan established to receive the distribution on behalf of a missing, designated nonspouse beneficiary. These amendments eliminate the prior safe harbor condition that required a distribution on behalf of a missing nonspouse beneficiary to be made only to an account other than an individual retirement plan. See § 2550.404a–3(d)(1)(ii). Therefore, a distribution on behalf of a missing nonspouse beneficiary would satisfy this condition of the safe harbor only if directly rolled into an individual retirement plan that satisfies the requirements of new section 402(c)(11) of the Code.[8] The final rule also makes conforming changes to the content requirements of the mandated participant and beneficiary termination

[1] Under § 2578.1(d)(2)(vii)(B), a QTA is directed to make distributions in accordance with the safe harbor regulation.

[2] 71 FR 20830 n. 21.

[3] See 26 CFR 1.402(c)–2, Q&A–12.

[4] 71 FR 20828 n.14.

[5] Section 829 of the Pension Protection Act.

[6] Section 829 of the Pension Protection Act requires that the individual retirement plan established on behalf of a nonspouse beneficiary must be treated as an inherited individual retirement plan within the meaning of Code § 408(d)(3)(C) and must be subject to the applicable mandatory distribution requirements of Code § 401(a)(9)(B).

[7] 72 FR 7516 (Feb. 15, 2007). The interim final rule was effective and applicable to distributions made on or after March 19, 2007.

[8] See also I.R.S. Notice 2007–7, 2007–5 I.R.B. 395.

notice (and the related model notice under the safe harbor at the Appendix to § 2550.404a–3) and to the content of the required participant and beneficiary termination notice (and the related model notice for abandoned plans at Appendix C to § 2578.1). The specific changes being made to § 2550.404a–3 and § 2578.1 are described below in Section C and Section D of this preamble, respectively. Concurrently with publication of this final rule, the Department is publishing a final amendment to PTE 2006–06,[9] which clarifies that the exemption provides relief to a QTA that designates itself or an affiliate as the provider of an inherited individual retirement plan for a missing, designated nonspouse beneficiary pursuant to the exemption's conditions. As noted in the preamble to the proposed amendments to PTE 2006–06, however, the Department interprets PTE 2006–06 as currently available to the QTA for its self-selection as an inherited individual retirement plan provider subject to the conditions of the exemption.

C. Amendments Relating to the Safe Harbor for Distributions From Terminated Individual Account Plans

1. Section 2550.404a–3(d)—Conditions

Paragraph (d)(1)(ii) of this section requires that the distribution of benefits on behalf of a nonspouse beneficiary of a participant be made to ''an account (other than an individual retirement plan)'' because historically such distribution was not eligible for rollover into an individual retirement plan. This condition is being revised to require that the distribution of benefits on behalf of a designated nonspouse beneficiary be rolled over into an inherited individual retirement plan that complies with the requirements of section 402(c)(11) of the Code, as permitted under the PPA for distributions occurring after December 31, 2006.

Paragraph (d)(1)(iii)(C) of this section permits as an alternative distribution option that certain small benefits on behalf of a nonspouse beneficiary of a participant be distributed to ''an account (other than an individual retirement plan)'' that a financial institution, other than the qualified termination administrator, provides to the public at the time of the distribution. This alternative option is similarly being revised to require the rollover of benefits on behalf of a designated nonspouse beneficiary to an inherited individual retirement plan.

[9] 71 FR 20856 (April 21, 2006).

Paragraph (d)(2)(ii)(A) of this section is being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan and eliminate reference to ''other account.''

Paragraphs (d)(2)(iii), (d)(2)(iv) and (d)(3) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan, and bank or savings association accounts for certain small amounts.

2. Section 2550.404a–3(e)—Notice to Participants and Beneficiaries

Paragraphs (e)(1)(iv), (e)(1)(v) and (e)(1)(vi) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan and eliminate reference to ''other account.''

3. Section 2550.404a–3(f)—Model Notice

The appendix to this section contains a Notice of Plan Termination for terminated individual account plans other than abandoned plans that currently includes an optional paragraph referring to distributions to nonspouse beneficiaries. This paragraph is being deleted because distributions to nonspouse beneficiaries will no longer be required to be made to accounts other than individual retirement plans. A parenthetical is being added to the fourth paragraph to clarify that individual retirement plans established on behalf of missing, designated nonspouse beneficiaries are inherited individual retirement plans.

D. Amendments Relating to the Termination of Abandoned Individual Account Plans

1. Section 2578.1(d)(2)(vi)—Notify Participants

Paragraph (d)(2)(vi)(A)(5)(ii) of this section is being revised to incorporate the appropriate cross reference to conditions for rollovers on behalf of nonspouse beneficiaries in § 2550.404a–3(d)(1)(ii).

Paragraphs (d)(2)(vi)(A)(5)(iii) and (d)(2)(vi)(A)(6) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan in § 2550.404a–3(d)(1)(i) and (d)(1)(ii) and eliminate reference to ''account.''

Paragraphs (d)(2)(vi)(A)(7) and (d)(2)(vi)(A)(8) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan in § 2550.404a–3(d)(1)(i) and (d)(1)(ii).

2. Section 2578.1(i)—Model Notices

Appendix C to this section contains a Notice of Plan Termination for abandoned plans that currently includes an optional paragraph (''Option 2'') referring to distributions to nonspouse beneficiaries. This optional paragraph is being deleted because distributions to nonspouse beneficiaries will no longer be required to be made to accounts other than individual retirement plans. To conform to this change, the instructions for ''Option 1'' are being revised to delete reference to ''participant's spouse.'' ''Option 3'' is renumbered as ''Option 2'' and the instructions are revised to eliminate reference to ''(or special account for non-spousal beneficiaries if you are a beneficiary other than the participant's spouse)'' and ''(or special non-spousal account).'' A parenthetical is being added to Option 1 and Option 2 to clarify that individual retirement plans established on behalf of missing, designated nonspouse beneficiaries are inherited individual retirement plans. ''Option 4'' is renumbered as ''Option 3.''

E. Regulatory Impact Analysis

Summary

By conforming regulations pertaining to distributions from certain terminated plans with recent changes to the Code, this interim final rule preserves for certain nonspouse beneficiaries of deceased participants the opportunity to take advantage of preferential tax treatment newly permitted by the Pension Protection Act for distributions after December 31, 2006. Nonspouse beneficiaries will benefit from the preservation, on their behalf, of tax-favored savings set aside for retirement. This final rule also will affect plan fiduciaries, including QTAs, by altering the procedures applicable to certain termination distributions. The Department anticipates that, rather than increasing costs, these amendments will reduce compliance costs modestly for plan fiduciaries and QTAs. Because the rule's new distribution procedures for terminated plans apply only to the narrow group of nonspouse beneficiaries who have not returned a distribution election, the Department believes that the rule's economic impact will be small, overall, but positive.[10]

[10] As described earlier, the Department is publishing, concurrently with publication of this rule, amendments to PTE 2006–06, which will establish under the conditions of the exemption

Continued

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

Paperwork Reduction Act

The information collections included in this final rule, together with information collections included in the amendments to PTE 2006–06, are currently approved by the Office of Management and Budget (OMB) under OMB control number 1210–0127. This approval is currently scheduled to expire on June 30, 2009. The final rule makes minor changes to the content requirements of the participant and beneficiary termination notices, as described earlier in the preamble. These conforming changes, which involve the deletion or substitution of a small number of words in each notice, do not increase the burden of the information collections and do not constitute a substantive or material modification of the existing information collection request approved under OMB control number 1210–0127. Accordingly, the Department has not made a submission for OMB approval of a revision in the burden estimates in connection with this final rule or the amendments to PTE 2006–06, published simultaneously with this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are likely to have a significant economic impact on a substantial number of small entities. Because the rule initially was issued as an interim final rule, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct an initial regulatory flexibility analysis. Furthermore, because the final rule imposes no additional costs on employers or plans, the Department believes that it would not have a significant impact on a substantial number of small entities. Accordingly, the Department believes that no regulatory flexibility analysis would be required in any case under the RFA.

Congressional Review Act Statement

The final rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it does not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million on the private sector, adjusted for inflation.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the final rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

29 CFR Part 2578

Employee benefit plans, Pensions, Retirement.

■ For the reasons set forth in the preamble, the Department of Labor amends 29 CFR chapter XXV as follows:

Title 29—Labor

Subchapter F—Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 continues to read as follows:

that a QTA may designate itself or an affiliate as the provider of an inherited individual retirement plan for a nonspouse beneficiary who has not returned a distribution election. In assessing the economic costs and benefits of this final rule, the Department has taken into account the amendments to PTE 2006–06, which will make explicit the availability of the conditional relief to parties that follow the amended rules with respect to nonspouse distributions, a result that the Department believes will assist in the achievement of the purposes underlying the regulations.

Authority: 29 U.S.C. 1135 and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C.1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.412–1 also issued under 29 U.S.C.1112.

■ 2. Amend § 2550.404a–3 by revising paragraphs (d)(1)(ii), (d)(1)(iii)(C), (d)(2)(ii)(A), (d)(2)(iii), (d)(2)(iv), (d)(3), (e)(1)(iv), (e)(1)(v), (e)(1)(vi) and the appendix to read as follows:

§ 2550.404a–3 Safe Harbor for Distributions from Terminated Individual Account Plans.

* * * * *

(d) * * *

(1) * * *

(ii) In the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, to an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary; or

(iii) * * *

* * * * *

(C) An individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) offered by a financial institution other than the qualified termination administrator to the public at the time of the distribution.

(2) * * *

(ii) * * *

(A) Seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), and

* * * * *

(iii) All fees and expenses attendant to the transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), including investments of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs and surrender charges), shall not exceed the fees and expenses charged by the provider of the plan or account for comparable plans or accounts established for reasons other than the receipt of a distribution under this section; and

(iv) The participant or beneficiary on whose behalf the fiduciary makes a distribution shall have the right to enforce the terms of the contractual agreement establishing the plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), with regard to his or her transferred account balance, against the plan or account provider.

(3) Both the fiduciary's selection of a transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section) and the investment of funds would not result in a prohibited transaction under section 406 of the Act, unless such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

(e) * * *

(1) * * *

(iv) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the plan will distribute the account balance of the participant or beneficiary to an individual retirement plan (i.e., individual retirement account or annuity described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) and the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(v) A statement explaining what fees, if any, will be paid from the participant or beneficiary's individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), if such information is known at the time of the furnishing of this notice;

(vi) The name, address and phone number of the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) provider, if such information is known at the time of the furnishing of this notice; and

* * * * *

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APPENDIX TO § 2550.404a-3

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

This notice is to inform you that [*name of the plan*] (the Plan) has been terminated and we are in the process of winding it up.

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance in the Plan on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. {*If applicable, insert the following sentence:* The actual amount of your distribution may be more or less than the amount stated in this notice depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.}

Your distribution options under the Plan are {*add a description of the Plan's distribution options*}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {*enter a description of the Plan's election process*}.

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). {*If the name of the provider of the individual retirement plan is known, include the following sentence:* The name of the provider of the individual retirement plan is [*name, address and phone number of the individual retirement plan provider*].} Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into an individual retirement plan, [*name of the financial institution*] charges the following fees for its services: {*add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*}.}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the plan administrator or other appropriate contact person*].

Sincerely,
[*Name of plan administrator or appropriate designee*]

SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2578—RULES AND REGULATIONS FOR ABANDONED PLANS

■ 3. The authority citation for part 2578.1 continues to read as follows:

Authority: 29 U.S.C. 1135; 1104(a); 1103(d)(1).

■ 4. Amend § 2578.1 by revising paragraphs (d)(2)(vi)(A)(*5*)(*ii*), (d)(2)(vi)(A)(*5*)(*iii*), (d)(2)(vi)(A)(*6*), (d)(2)(vi)(A)(*7*), (d)(2)(vi)(A)(*8*) and Appendix C to read as follows:

§ 2578.1 Termination of Abandoned Individual Account Plans

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(A) * * *

(5) * * *

(ii) To an inherited individual retirement plan described in § 2550.404a–3(d)(1)(ii) of this chapter (in the case of a distribution on behalf of a distributee other than a participant or spouse),

(iii) In any case where the amount to be distributed meets the conditions in § 2550.404a–3 (d)(1)(iii), to an interest-bearing federally insured bank account, the unclaimed property fund of the State of the last known address of the participant or beneficiary, or an individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) or

* * * * *

(*6*) In the case of a distribution to an individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) a statement explaining that the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(*7*) A statement of the fees, if any, that will be paid from the participant or beneficiary's individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) or other account (described in § 2550.404a–3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice;

(*8*) The name, address and phone number of the provider of the individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter), qualified survivor annuity, or other account (described in § 2550.404a–3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice; and

* * * * *

APPENDIX C TO § 2578.1

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

We are writing to inform you that the [*name of plan*] (Plan) has been terminated pursuant to regulations issued by the U.S. Department of Labor. The Plan was terminated because it was abandoned by [*name of the plan sponsor*].

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating the Plan and distributing your benefits.

Your distribution options under the Plan are {*add a description of the Plan's distribution options*}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {*enter a description of the election process established by the qualified termination administrator*}.

{*Select the next paragraph from options 1 through 3, as appropriate.*}

{*Option 1: If this notice is for a participant or beneficiary, complete and include the following paragraph provided the account balance does not meet the conditions of §2550.404a-3(d)(1)(iii).*}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary) maintained by {*insert the name, address, and phone number of the provider if known, other wise insert the following language* [a bank or insurance company or other similar financial institution]}. Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into an individual retirement plan, [*name of the financial institution*] charges the following fees for its services: {*add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*}.}

{*Option 2: If this notice is for a participant or beneficiary whose account balance meets the conditions of §2550.404a-3(d)(1)(iii), complete and include the following paragraph.*}

If you do not make an election within 30 days from your receipt of this notice, and your account balance is $1,000 or less, federal law permits us to transfer your balance to an interest-bearing federally insured bank account, to the unclaimed property fund of the State of your last known address, or to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). Pursuant to federal law, your money, if transferred to an individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If known, include the name, address, and telephone number of the financial institution or State fund into which the individual's account balance will be transferred or deposited. If the individual's account balance is to be transferred to a financial institution and fee information is known, include the following sentence:* Should your money be transferred into a plan or account, [*name of the financial institution*] charges the following fees for its services: {*add a statement of fees, if any, that will be paid from the individual's account*}.}

{*Option 3: If this notice is for a participant or participant's spouse whose distribution is subject to the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA), complete and include the following paragraph.*}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be distributed in the form of a qualified joint and survivor annuity or qualified preretirement annuity as required by the Internal Revenue Code. {*If the name of the annuity provider is known, include the following sentence:* The name of the annuity provider is [*name, address and phone number of the provider*].}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the qualified termination administrator and, if different, the name, address, and telephone number of the appropriate contact person*].

Sincerely,
[*Name of qualified termination administrator or appropriate designee*]

Signed at Washington, DC, this 29th day of September 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E8–23424 Filed 10–6–08; 8:45 am]

BILLING CODE 4510–29–C

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203 and 260

[Docket ID: MMS–2007–OMM–0074]

RIN 1010–AD29

Royalty Relief for Deepwater Outer Continental Shelf Oil and Gas Leases—Conforming Regulations to Court Decision

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule amends 30 CFR parts 203 and 260 to conform the regulations to the decision of the United States Court of Appeals for the Fifth Circuit in *Santa Fe Snyder Corp., et al.* v. *Norton.* That decision found that certain provisions of the MMS regulations interpreting section 304 of the Deep Water Royalty Relief Act are contrary to the requirements of the statute. MMS will determine lessees' royalty under leases subject to Deep Water Royalty Relief Act section 304, for both past and future periods, in a manner consistent with the Fifth Circuit's decision in the *Santa Fe Snyder* case and this rule.

DATES: *Effective Date:* This rule is effective November 6, 2008

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: The MMS published a proposed rule (PR) in the **Federal Register** on December 21, 2007 (72 FR 72652), to inform the public of our intent to revise 30 CFR part 203, which pertains to royalty relief and 30 CFR part 260, which pertains to Outer Continental Shelf (OCS) leasing, in a manner consistent with the *Santa Fe Snyder* ruling. The PR invited comments, recommendations, and specific remarks on our regulatory changes consistent with the *Santa Fe Snyder* decision. The regulatory changes in this final rule are exactly the same as those published in the PR with three clarifying exceptions. In § 203.71(a)(3) we add the expression of ''newly constituted'' field to distinguish between the field which was the subject of the original application and the new field which becomes the subject of the revised application. In § 203.71(a)(5) we label as field A the field to which the well was originally assigned and from which it is removed by re-assigning the well to a second field, which we label as field B. That step avoids an ambiguity in the old wording. Also, we re-word the new language in the last cell of the table to distinguish between the kind of lease referred to in § 260.114 and the kind of lease referred to in § 260.124. In § 260.114 we add language that each Final Notice of Sale Package, which contains the official information on a lease's water depth category, is announced in the **Federal Register**.

Furthermore, in the Regulatory Planning and Review (Executive Order 12866) section, we have properly determined this final rule to be ''significant'' as determined by the Office of Management and Budget and subject to review under Executive Order 12866.

Background

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Deep Water Royalty Relief Act (Act). The Act was designed to encourage development of new supplies of energy. It included incentives to promote investment in a particularly high-cost, high-risk area, the deep waters of the Gulf of Mexico. These deep Gulf of Mexico waters were viewed as having potential for large oil and gas discoveries, but technological advances and multi-billion dollar investments would be needed to realize that potential. Since the enactment of the incentive, the deep waters of the Gulf of Mexico have become one of the most important sources of domestic oil and gas production.

The Secretary of the Interior was required to suspend royalties for certain volumes of production on new leases in more than 200 meters of water in the central and western Gulf of Mexico issued in the first 5 years following enactment of the Act. These royalty suspension volumes (RSVs) (i.e., specified volumes of royalty-free production) ranged from 17.5 million to 87.5 million barrels of oil equivalent (BOE), depending on water depth. The royalty suspension incentive was intended to provide companies that undertook these investments specific volumes of royalty-free production to help recover a portion of their capital costs before starting to pay royalties. Once the specified volume has been produced, royalties become due on all additional production. This was not a matter of agency discretion.

We published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on February 23, 1996 (61 FR 6958), to inform the public of our intent to develop comprehensive regulations implementing the Act. The ANPR sought comments and recommendations to assist us in that process. We continued to collect comments and conducted a public meeting in New Orleans on March 12 and 13, 1996, about the matters the ANPR addressed. We published an interim rule on March 25, 1996 (effective 30 days later). We invited comments on the interim rule and stated that we would consider them as part of our review of responses to the ANPR mentioned above. We further stated that based on comments received and experience gained, we may include changes to the matters the interim rule addresses in a comprehensive rulemaking implementing the Act.

Section 304 of the Act specifies RSVs for offshore oil and gas leases in 3 defined water depth ranges deeper than 200 meters of water issued in lease sales held in the first 5 years after the Act's enactment on November 28, 1995. We stated in our March 25, 1996, interim rule entitled Deepwater Royalty Relief for New Leases that ''[s]ection 304 of the Act does not provide specific guidance on how to apply the royalty suspension volumes to leases issued during sales after November 28, 1995'' and that ''[t]he primary question is how to apply the minimum royalty suspension volumes laid out in the statute'' (61 FR 12023). We published a final rule implementing section 304 of the Act in the **Federal Register**, with no substantive change in the regulatory language, on January 16, 1998 (63 FR 2626), that became effective on February 17, 1998.

On October 4, 2004, the U.S. Court of Appeals for the Fifth Circuit in *Santa Fe Snyder Corp., et al.* v. *Norton,* 385 F.3d 884, agreed with the conclusion of the U.S. District Court for the Western District of Louisiana that the regulations implementing royalty relief under section 304 are inconsistent with the statute. The regulations provided that leases issued under section 304 that are assigned to a field with a current lease that produced before November 28, 1995, are not eligible for royalty relief. The regulations further provided that where there is more than one section 304 lease in a field, leases share in the statutory RSV. These requirements were promulgated in the interim rule effective April 24, 1996 (61 FR 12022).

The effect of the court's ruling in *Santa Fe Snyder* was that: (1) The MMS could not condition royalty relief under section 304 on the lease being part of a field that was not producing before November 28, 1995; and (2) the RSVs prescribed in section 304 apply to each lease, not jointly to all leases in a particular field. An Information to Lessees (ITL) dated August 8, 2005, alerted affected lessees that we would abide by the decision and revise the regulations to conform to this decision, resulting in the proposed and now final rule.

Comments on the Proposed Rule

We received six comment letters on the PR. Two of the commenters were from industry trade associations (National Ocean Industries Association (NOIA) and American Petroleum Institute (API)). We also received comments from one operator and three individuals from the general public. Two of the individual comment letters were not germane to the PR and were not considered.

All comments received are available for review at *http://www.regulations.gov.* To view comments on this PR, under the tab ''More Search Options,'' click ''Advanced Docket Search'', then select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, ''select MMS–2007–OMM–0074'' to view comments and supporting materials for this rulemaking. Information on using Regulations.gov and viewing the docket after the close of the comment period is available through the site's ''user tips'' link.

All four commenters submitting germane comments on the PR were

supportive of amending the regulations at 30 CFR parts 203 and 260 to conform to the *Santa Fe Snyder Corp., et al.* v. *Norton* decision. The respondents were appreciative of the regulatory change that would bring clarity and avoid confusion to readers of the regulations. No suggestions or proposals were received to change or clarify our proposed regulatory changes to implement the court's decision and its interpretation of section 304 of the DWRRA.

Summary of Changes to Proposed Rule

The regulatory changes in this final rule are exactly the same as those published in the PR with three clarifying exceptions. In § 203.71(a)(3), we add the expression of ''newly constituted'' field to distinguish between the field which was the subject of the original application and the new field which becomes the subject of the revised application. In § 203.71(a)(5), we label as field A the field to which the well was originally assigned and from which it is removed by re-assigning the well to a second field, which we label as field B. That step avoids an ambiguity in the old wording. Also, we re-word the new language in the last cell of the table to distinguish between the kind of lease referred to in § 260.114 and the kind of lease referred to in § 260.124. In § 260.114, we add language that each Final Notice of Sale Package, which contains the official information on a lease's water depth category, is announced in the **Federal Register**.

Regulatory Change

This final rule will revise 30 CFR part 203, which pertains to royalty relief; and 30 CFR part 260, which pertains to OCS leasing, to treat leases issued under section 304 (referred to in our regulations as ''eligible leases'') in a manner consistent with the *Santa Fe Snyder* ruling. The revisions conform our regulations to the court ruling and are non-discretionary.

Changes in 30 CFR part 203 delete references to ''eligible leases'' in § 203.69 and change the sharing rule in § 203.71 for purposes of consistency. It removes the eligible leases from the section that discusses how to allocate RSVs on a field. These changes mean that regardless of the outcome of an application for royalty relief for leases issued either before or after the 5-year period covered by section 304, which may affect the field to which they are assigned, both eligible leases and leases issued in sales held after November 25, 2000 (referred to in the regulation as ''Royalty Suspension'' (RS) leases), receive the full RSVs stated in the lease instrument. Further, as with a RS lease, production from an eligible lease counts against any RSVs available to pre-Act leases on a field to which the eligible lease or RS lease has been assigned. However, unlike RS leases, lessees of eligible leases may not initiate an application seeking, or requesting a share in, an additional RSV granted to an RS lease. This is because there would now be more than enough financial incentive for any single lease.

The revisions to the regulations in part 260 modify § 260.3 relating to MMS's authority to collect information and remove references in § 260.113(a) to prior production on the field to which a lease is assigned. Deletions in § 260.114 remove paragraphs on procedures for notification, determination of RSVs, and having more than one RSV on a lease because they are no longer required. Section 260.114(b) is also revised to change the reference from ''fields'' to ''each eligible lease.'' Section 260.124 is revised to remove a reference to eligible leases establishing an RSV for a field, which is not valid under section 304 of the Act, as interpreted in *Santa Fe Snyder.* Thus, royalty-free production from an RS lease only counts against the RSV of a field if that volume was established as a result of an approved application for royalty relief for a pre-Act lease under part 203. Finally, all of § 260.117 is eliminated, because provisions for allocation of RSVs among multiple leases on a field are no longer needed.

Retroactive Effect

As explained above, the need for this rule arises from the Fifth Circuit's decision. The effect of the Fifth Circuit's decision was to declare void the regulatory provisions that the court found to be inconsistent with section 304. Because section 304 had not changed, the necessary implication is that the relevant regulations were unlawful from their inception. The Fifth Circuit's decision created a regulatory void between the date on which the interim rule became effective (April 24, 1996) and the present. The Fifth Circuit plainly would apply its interpretation of section 304 for all time periods, not just the period after the decision. This rule does nothing more than conform the regulations to the Fifth Circuit's decision, and reflects the legal interpretation of section 304 that the Fifth Circuit would apply. We thus replace the rule that the court struck down with this rule for the time period that the invalidated provisions covered, so as to avoid having a gap and consequent ambiguity in the rule between April 24, 1996, and the date of this rule. See *Citizens to Save Spencer County* v. *EPA* 600 F.2d 844, 879–880 (DC Cir. 1979), or *Beverly Hospital* v. *Bowen* 872 F.2d 483, 485–486 (DC Cir. 1989). Therefore, this rule is effective immediately upon being published with retroactive effect to April 24, 1996.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866.

(1) This final rule conform the regulations to the Fifth Circuit's decision. It will have an annual effect on the economy of $100 million or more. The following are the same aggregate fiscal estimates presented in the December 21, 2007 (72 FR 72652), PR.

The Fifth Circuit's decision means that production on more section 304 leases will be subject to royalty relief than under the previous regulations, resulting in larger fiscal costs to the Federal Government. The magnitudes of these fiscal losses (on past and future royalty collections) will vary significantly depending upon whether the Federal Government ultimately prevails (low case) or does not prevail (high case) in litigation over the MMS authority to condition royalty relief on price thresholds (see *Kerr McGee Oil and Gas Corp.* v. *Allred,* Docket No. 2:06 CV 0439). In the low case, only deepwater leases issued in 1998 and 1999 likely would be affected, because those leases were not issued with price thresholds; and for the other DWRRA leases, market prices most likely will exceed threshold levels, thereby eliminating future royalty relief on these other deepwater leases. In the high case, all deepwater leases issued throughout the 1996 to 2000 period would be affected, because deepwater leases issued in 1996, 1997, and 2000 then would be treated similar to deepwater leases issued in 1998 and 1999 with respect to price thresholds.

There are two basic categories of section 304 leases affected by the Fifth Circuit Court's decision. For section 304 leases placed on fields by MMS that consist of one or more leases which produced prior to the DWRRA, we projected that from 2000 through 2024, production of oil and gas could range from 4 million BOE in the low case to 27 million BOE in the high case. The total royalty losses using OMB economic assumptions for the 2009 Budget (oil and gas prices) during this 25-year period are estimated to range

from $16 million in the low case to almost $205 million in the high case (expressed in current-year dollars). Applying discount rates of 3 and 7 percent to the potential cash flows, the present value range of fiscal losses becomes $17 to $192 million at 3 percent and $20 to $189 million at 7 percent (the lower bound figures increase slightly as the discount rate rises because all of the losses in this case, associated with leases issued in 1998 and 1999, represent historical royalties that must be paid back, with interest, to the lessees). Essentially all production and royalties from this category of section 304 leases, up to the prescribed royalty suspension volumes for each lease, contribute to the fiscal cost to the Federal Government. This is because, in previous DWRRA regulations, such section 304 leases that were placed on fields that produced prior to the DWRRA were not considered eligible for royalty relief.

The Fifth Circuit Court's ruling also means that the suspension volumes cited in the DWRRA must apply to each lease, not shared by all leases on a geologic field, as MMS interpreted the Act. Thus, the added production from a field that could be eligible for royalty relief consists of production from all the Section 304 leases on the field (up to one RSV per lease) that is in excess of the single RSV (cited in the Act for the applicable water depth) for the entire field as interpreted by MMS in the prior DWRRA regulations. In fact, the vast majority of the royalty losses from section 304 leases will occur as a result of this aspect of the court's ruling. We estimate the additional production that will be subject to royalty relief from this ''lease-based'' court interpretation will be about 400 million BOE in the 20-year period from 2007 through 2026 in the low case (covering only DWRRA leases issued in 1998 and 1999), and approximately 1.3 billion BOE in the 28-year period from 2007 through 2034 in the high case (covering all DWRRA leases). The royalty costs using OMB economic assumptions for the 2009 Budget (oil and gas prices) associated with these production levels during the time periods of production are estimated to be $3 billion in the low case and $10 billion in the high case (expressed in current-year dollars). Discounting these cash flows yields ranges of present value royalty losses of $2.5 to $7.5 billion at 3 percent, and $1.9 to $5.2 billion at 7 percent.

It is important to recognize that the prior DWRRA regulations granted relief in the amount of one RSV per geologic field to all fields containing at least one section 304 lease as long as that field had not produced prior to the DWRRA. The Fifth Circuit Court's ruling on this category of Section 304 leases has changed the relief to apply to each section 304 lease regardless of which other leases are on the field. The differences in royalty free production and royalty relief dollars from the Court's ''lease'' interpretation and the MMS ''field'' interpretation represent measures of the cost to the Federal Government for this category of section 304 leases associated with this regulation.

In estimating these measures, one needs to recognize that a loss to the Federal Government occurs only on fields containing multiple Section 304 leases on which their total combined production exceeds a single RSV for the field. For such section 304 leases, the dollar cost loss measure is represented by royalty value from each section 304 lease (up to one RSV per lease) on a field less the royalty value of the one RSV of relief that the field would have gotten under the previous DWRRA regulation. It follows that no Federal Government cost is incurred in terms of royalty losses on fields containing only a single section 304 lease or from fields with multiple section 304 leases whose combined reserves are less than a single RSV.

Following the above logic, in our low case scenario we estimate the incremental royalty free production from all 1998–1999 section 304 leases of up to one RSV per lease beyond one RSV per field to be 400 million BOE, representing 49.3 percent of the total production (limited to no more than one RSV per lease) from all 1998–1999 section 304 leases. The royalty value of this 400 million BOE increment is estimated to be $3 billion, or 52.1 percent of the total royalty value from all 1998–1999 section 304 leases (limited to no more than one RSV per lease).

In our high case estimate, we estimate the incremental royalty free production from all 1996–2000 section 304 leases of up to one RSV per lease beyond one RSV per field to be 1.3 billion BOE, representing 54 percent of the total production (limited to no more than one RSV per lease) from all section 304 leases. The royalty value of this 1.3 billion BOE increment is estimated to be $10 billion, or 56.7 percent of the total royalty value from all section 304 leases (limited to no more than one RSV per lease).

Thus, almost all of the fiscal costs of the Fifth Circuit Court's ruling in *Santa Fe Snyder* can be attributed to the changes to the designated amounts of royalty relief from geologic fields to individual leases. The total royalty costs of the court's ruling, spanning the 35-year period from 2000 through 2034 for both categories of section 304 leases, are estimated to be between $3.1 and $10.3 billion (expressed in current-year dollars). These are the same figures that we estimated in the PR.

(2) This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because royalty relief is confined to leasing in Federal offshore waters that lie outside the coastal jurisdiction of state and other local agencies. Careful review of the lease sale notices, along with stringent leasing policies now in force, ensure that the Federal OCS leasing program, of which royalty relief is only a component, does not conflict with the work of other Federal agencies.

(3) This final rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This final rule will not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This final rule conforms the regulations to the Fifth Circuit's decision, and reflects the legal interpretation of section 304 that the Fifth Circuit would apply. We are modifying or deleting relevant sections of the regulations that the court struck down so as to avoid having a gap and consequent ambiguity in the regulations between April 24, 1996, and the date of this rule.

A Regulatory Flexibility Analysis is not required because there are no legal alternatives to the court's decision that deemed our current regulations to be inconsistent with the statute, as cited in the preamble, other than to publish this rule. We have determined that this rule will not have a significant economic effect on a substantial number of small entities. A Small Entity Compliance Guide is not required.

This change affects lessees and operators of deepwater leases in the OCS. This includes about 40 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) Code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500

employees. Based on these criteria, only 10 of these companies are considered small. This final rule, therefore, will not affect a substantial number of small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act

This final rule is a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Will have an annual effect on the economy of $100 million or more, based on the analysis presented in the previous section. Current MMS estimates indicate the royalty costs of the rule, occasioned by the court ruling, will be from $3.1 billion to $10.3 billion, based on applicable production amounts during the 35-year period from 2000 through 2034. This low case dollar amount represents the added royalty losses to the Federal Government only on deepwater leases issued without price thresholds, i.e., in 1998 and 1999. The high case estimate represents royalty collection losses on all DWRRA leases, and assumes MMS cannot condition royalty relief on market prices for oil and gas. It is likely that virtually all of the future production associated with this forgone royalty cost would have occurred even without the royalty relief offered in the DWRRA. The decisions to develop at least some of the fields responsible for this production occurred under incentive terms in effect before the *Santa Fe Snyder* judgment. Moreover, higher oil and gas market prices alone likely would have provided ample incentive for Gulf of Mexico deepwater exploration and development.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act

The revisions do not contain any information collection subject to the Paperwork Reduction Act (PRA) and do not require a submission to OMB for review and approval under section 3507(d) of the PRA. The one remaining requirement in Part 260 (§ 260.124(a)(l)) is exempt from the PRA under 5 CFR 1320.4(a)(2), (c).

An information letter was sent to all lessees of deep water leases on August 8, 2005, and DOI informed the lessees that it would apply the court's decision. It was neither necessary nor appropriate for the Department to collect information used only for purposes of applying the regulatory provisions that the court held invalid.

The rule also refers to but does not change information collection requirements for 30 CFR 203 that are already approved under OMB Control Number 1010–0071 (expiration 12/31/09).

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The MMS has analyzed this rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This rule meets the criteria set forth in 516 Departmental Manual 2 (Appendix 1.10) for a Departmental ''Categorical Exclusion'' in that this rule is ''* * * of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis * * *.'' This rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for a MMS ''Categorical Exclusion'' in that its impacts are limited to administration, economic or technological effects. Further, the MMS has analyzed this rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 516 Departmental Manual 2.3, and Appendix 2. The MMS concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 516 Departmental Manual 2 (Appendix 2).

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 203

Continental shelf, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: July 18, 2008.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR parts 203 and 260 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396; 25 U.S.C. 2107; 30 U.S.C. 189, 241; 30 U.S.C. 359; 30 U.S.C. 1023; 30 U.S.C. 175; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Revise § 203.69(c) to read as follows:

§ 203.69 If my application is approved, what royalty relief will I receive?

* * * * *

(c) If your application includes pre-Act leases in different categories of water depth, we apply the minimum royalty suspension volume for the deepest such lease then assigned to the field. We base the water depth and makeup of a field on the water-depth delineations in the ''Lease Terms and Economic Conditions'' map and the ''Fields Directory'' documents and updates in effect at the time your application is deemed complete. These publications are available from the MMS Gulf of Mexico Regional Office.

* * * * *

■ 3. Amend § 203.71 as set forth below:

■ A. Revise paragraphs (a)(1), (3), and (5).

■ B. Remove paragraph (b).

■ C. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

* * * * *

(a) * * *

If . . .	Then . . .	And . . .
(1) We assign an eligible lease to your authorized field after we approve relief.	We will not change your authorized field's royalty suspension volume determined under § 203.69.	Production from the assigned eligible lease(s) counts toward the royalty suspension volume for the authorized field, but the eligible lease will not share any remaining royalty suspension volume for the authorized field after the eligible lease has produced the volume applicable under § 260.114 of this chapter.
* *	* *	* *
(3) We assign another lease that you operate to your field while we are evaluating your application.	In our evaluation of your authorized field, we will take into account the value of any royalty relief the added lease already has under § 260.114 or its lease document. If we find your authorized field still needs additional royalty suspension volume, that volume will be at least the combined royalty suspension volume to which all added leases on the field are entitled, or the minimum suspension volume of the authorized field, whichever is greater.	(i) You toll the time period for evaluation until you modify your application to be consistent with the newly constituted field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned pre-Act lease or royalty suspension lease shares the royalty suspension we grant to the newly constituted field. An eligible lease does not share the royalty suspension we grant to the new field. If you do not agree to toll, we will have to reject your application due to incomplete information. Production from an assigned eligible lease counts toward the royalty suspension volume that we grant under § 203.69 for your authorized field, but you will not owe royalty on production from the eligible lease until it has produced the volume applicable under § 260.114 of this chapter.
* *	* *	* *
(5) We reassign a well on a pre-Act, eligible, or royalty suspension lease from field A to field B.	The past production from the well counts toward the royalty suspension volume that we grant under § 203.69 to field B.	For any field based relief, the past production for that well will not count toward any royalty suspension volume that we grant under § 203.69 to field A. Moreover, past production from that well will count toward the royalty suspension volume applicable for the lease under § 260.114 if the well is on an eligible lease or under § 260.124 if the well is on a royalty suspension lease.

* * * * *

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

■ 4. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

■ 5. Revise § 260.3 to read as follows:

§ 260.3 What is MMS's authority to collect information?

(a) The Paperwork Reduction Act of 1995 (PRA) requires us to inform you that we may not conduct or sponsor, and you are not required to respond to, a collection of information unless it

displays a currently valid OMB control number. The information collection under 30 CFR part 260 is either exempt from the PRA (5 CFR 1320.4(a)(2), (c)) or refers to requirements covered under 30 CFR parts 203 and 256.

(b) You may send comments regarding any aspect of the collection of information under this part to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 5438, 1849 C Street, NW., Washington, DC 20240.

■ 6. Revise § 260.113 to read as follows:

§ 260.113 When does an eligible lease qualify for a royalty suspension volume?

(a) Your eligible lease will receive a royalty suspension volume as specified in the Act. The bidding system in § 260.110(g) applies.

(b) Your eligible lease may receive a royalty suspension volume only if your entire lease is west of 87 degrees, 30 minutes West longitude.

■ 7. Revise § 260.114 to read as follows:

§ 260.114 How does MMS assign and monitor royalty suspension volumes for eligible leases?

(a) We have specified the water depth category for each eligible lease in the final Notice of OCS Lease Sale Package. The Final Notice of Sale is published in the **Federal Register** and the complete Final Notice of OCS Lease Sale Package is available on the MMS Web site. Our determination of water depth for each lease became final when we issued the lease.

(b) We have specified in the Notice of OCS Lease Sale the royalty suspension volume applicable to each water depth. The following table shows the royalty suspension volumes for each eligible lease in million barrels of oil equivalent (MMBOE):

Water depth	Minimum royalty suspension volume
(1) 200 to less than 400 meters.	17.5 MMBOE.
(2) 400 to less than 800 meters.	52.5 MMBOE.
(3) 800 meters or more	87.5 MMBOE.

■ 8. Remove § 260.117.

■ 9. Revise the heading of § 260.124 and the introductory text of paragraph (b) to read as follows:

§ 260.124 How will royalty suspension apply if MMS assigns a lease issued in a sale held after November 2000 to a field that has a pre-Act lease?

* * * * *

(b) If we establish a royalty suspension volume for a field as a result of an approved application for royalty relief submitted for a pre-Act lease under part 203 of this chapter, then:

* * * * *

[FR Doc. E8–23290 Filed 10–6–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–0822]

RIN 1625–AA09

Drawbridge Operation Regulation; Okeechobee Waterway, Mile 126.3, Olga, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is changing the operating regulations governing the Wilson Pigott Bridge, Okeechobee Waterway mile 126.3, Olga, Lee County, Florida. This action is necessary for worker safety and will assist in expediting the repairs to this bridge. During the period of this rule, the bridge will open a single-leaf on signal; a double-leaf opening is available with a three-hour advance notice to the bridge tender.

DATES: This rule is effective from 6 a.m. on October 7, 2008, to 6 p.m. on February 28, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0822 and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3028 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Administration Branch, telephone number 305–415–6744. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM was impracticable and contrary to the public interest as the rule was needed to provide for worker safety and will assist in expediting the repairs of the bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Publishing an NPRM was impracticable and contrary to the public interest, because the rule was needed to provide for worker safety and will assist in expediting the repairs of the bridge.

Background and Purpose

33 CFR 117.317 requires that the Wilson Pigott Bridge, mile 126.3 at Olga, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least three hours notice is given.

Due to the repairs of the Wilson Pigott Bridge, Okeechobee Waterway mile 126.3 at Olga, Lee County, Florida, Coastal Marine Construction, Inc. representing the owner of the bridge, has requested that the Coast Guard change the current operation of the Wilson Pigott Bridge. This resulting regulation is necessary for workers safety and will assist in expediting repairs to the Wilson Pigott Bridge. During the duration of this temporary rule, the bridge will be required to open only a single-leaf on signal, rather than a double-leaf. A double-leaf opening will be available, however, with a three-hour notice to the bridge tender. In addition, sometime between September 5, 2008, and February 29, 2009, the bridge will be closed to navigation for an eight-hour period; the exact times and date of the bridge closure will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. In cases of emergency, the

bridge will be opened as soon as possible.

Discussion of Rule

During the period of this temporary rule, the draw of the Wilson Pigott Bridge shall open only a single-leaf on signal. Leaving one leaf in the closed position will significantly expedite repairs to the bridge and increase worker safety as the workers will be able to work on the closed leaf without interruption. Double-leaf operations shall be available if a three-hour advance notice is provided to the bridge tender. An eight-hour bridge closure will be required during the repairs. The exact date and times will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. The draw shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The rule allows for bridge openings during the repairs to this bridge and all closure times will be published with adequate time for mariners to plan accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Okeechobee Waterway in the vicinity of the Wilson Pigott Bridge, persons intending to drive over the bridge, and nearby business owners. The revision to the openings schedule will not have a significant impact on a substantial number of small entities. Although bridge openings will be restricted, vessel traffic will still be able to transit the Okeechobee Waterway pursuant to the revised opening schedule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 117.317(l) to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(l) *Wilson Pigott Bridge, Olga, Florida.* (1) The draw of the Wilson Pigott Bridge in Olga will open a single-leaf on signal with a double-leaf available with a three-hour notice to the bridge tender. In addition, the bridge will be closed to navigation for an eight-hour period; the exact times and date of the bridge closure will be published in the Local Notice to Mariners and Broadcast Notice to Mariners.

(2) *Effective Dates.* This paragraph (l) is effective from 6 a.m. on October 7, 2008, through 6 p.m. on February 28, 2009.

Dated: September 4, 2008.

R.S. Branham,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E8–23602 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0525; FRL–8726–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets, and Revised 2002 Base Year Emissions Inventory; Dallas/Fort Worth 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements of the Clean Air Act (CAA) for the Dallas/Fort Worth (DFW) moderate 1997 8-hour ozone nonattainment area. EPA is also approving the RFP motor vehicle emissions budgets (MVEBs) and a revised 2002 Base Year Emissions Inventory associated with the revision. EPA is approving the SIP revision because it satisfies the RFP, RFP transportation conformity and Emissions Inventory requirements for 1997 8-hour ozone nonattainment areas classified as moderate and demonstrates further progress in reducing ozone precursors. EPA is approving the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: This direct final rule will be effective December 8, 2008 without further notice unless EPA receives relevant adverse comments by November 6, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0525, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7242.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2007–0525. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'', or ''our'' is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?

We are approving a revision to the Texas SIP, submitted to meet the Emissions Inventory and RFP requirements of the CAA for the DFW moderate 1997 8-hour ozone nonattainment area. The revision was adopted by the State of Texas on May 23, 2007 and submitted to EPA on May 30, 2007. We are approving the revised 2002 Base Year Emissions Inventory, the 15% RFP plan, and the RFP 2008 MVEBs. The RFP plan demonstrates that emissions will be reduced 15 percent for the period of 2002 through 2008. The Volatile Organic Compounds (VOC) MVEB is 119.81 tpd, and the Oxides of Nitrogen (NO_X) emissions budget is 249.33 tpd. We are approving the SIP revision because it satisfies the Emissions Inventory, RFP, and RFP transportation conformity requirements for 1997 8-hour ozone nonattainment areas classified as moderate, and demonstrates further progress in reducing ozone precursors. We are approving the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on December 8, 2008 without further notice unless we receive relevant adverse comment by November 6, 2008. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the national ambient air quality standards (NAAQS) established by EPA. NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing state regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP.

III. What Is the Background for This Action?

Inhaling even low levels of ozone, a key component of urban smog, can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis and asthma, and reduce lung capacity. Volatile organic compounds (VOC) and oxides of nitrogen (NO_X) are known as ''ozone precursors'', as VOCs react with NO_X, oxygen, and sunlight to form ozone. The CAA requires that areas not meeting the NAAQs for ozone demonstrate RFP in reducing emissions of ozone precursors.

EPA promulgated, on July 18, 1997, a revised 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR (38855).[1] On April 30, 2004, EPA published designations and classifications for the revised 1997 8-hour ozone standard (69 FR 23858); Ellis, Johnson, Kaufman, Parker, and Rockwall Counties (the five new counties) were added to the DFW ozone nonattainment area; and the area was classified as a moderate nonattainment area. The DFW 1997 8-hour ozone nonattainment area therefore consists of nine counties. Collin, Dallas, Denton, and Tarrant counties (the four core counties) were initially classified as a moderate nonattainment area under the 1-hour ozone standard with an attainment date no later than November 15, 1996 (November 6, 1991, 56 FR 56694). The area did not attain the 1-hour standard by that outside 1996 deadline, and was reclassified as a serious 1-hour ozone nonattainment area with an attainment date no later than November 15, 1999 (February 18, 1998, 63 FR 8128).

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR

[1] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). The designation and implementation process for that standard is just starting and does not affect EPA's action here.

31727), EPA published the Phase 2 final rule for implementation of the 8-hour standard that addressed, among other things, the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS. In the Phase 1 Rule, RFP was defined in section 51.900(p) as meaning for the purposes of the 1997 8-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA. In section 51.900(q), rate of progress (ROP) was defined as meaning for purposes of the 1-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA (*see* 69 FR 23997).

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Rule in *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the court modified the scope of vacatur of the Phase 1 Rule. *See* 489 F.3d 1245 (D.C. Cir. 2007), *cert. denied*, 128 S.Ct. 1065 (2008). The court vacated those portions of the Phase 1 Rule that provide for regulation of the 1997 8-hour ozone NAAQS in some nonattainment areas under Subpart 1 in lieu of Subpart 2 and that allowed areas to revise their SIPs to no longer require certain programs as they applied for purposes of the 1-hour NAAQS; new source review, section 185 penalties, and contingency plans for failure to meet RFP and attainment milestones. The decision does not affect the requirements for areas classified under subpart 2, such as the DFW area, to submit a reasonable further progress plan for the 1997 8-hour ozone NAAQS. Litigation on the Phase 2 Rule is pending before the D.C. Circuit Court of Appeals.

Section 182 of the CAA and EPA's 1997 8-hour ozone regulations [2] require a state, for each 1997 8-hour ozone nonattainment area that is classified as moderate, to submit an emissions inventory and a RFP plan to show how the state will reduce emissions of VOCs and NO_X. The DFW moderate 1997 8-hour ozone nonattainment area has a maximum attainment date of June 15, 2010, that is beyond five years after designation. In addition, the four core counties in the DFW moderate area have an approved 15% VOC Rate of Progress plan under the 1-hour ozone standard (May 22, 1997, 62 FR 27964).

For a moderate area with an attainment date of more than five years after designation, the RFP plan must obtain a 15% reduction in ozone precursor emissions for the first six years after the baseline year (2002 through 2008). If such a moderate area also contains a portion of the area with an approved 15% VOC Rate of Progress plan under the 1-hour ozone standard, states are allowed to treat the area as two parts, each with a separate RFP target. (Rate of Progress refers to reasonable further progress for the 1-hour ozone standard.) For the part with an approved 15% VOC Rate of Progress plan under the 1-hour ozone standard, states can use reductions from VOC, NO_X, or a combination of the two and the RFP plan must demonstrate RFP for a total of 15% emission reductions for the first six years due to the moderate classification. *See* 40 CFR 51.910(a)(1)(ii)((A), which refers to section 51.910(b)(2). For the part without an approved 1-hour ozone 15% VOC Rate of Progress plan, states must obtain VOC reductions totaling 15% for the first six years. These VOC reductions can be obtained from the part of the area with an approved 1-hour VOC Rate of Progress plan. However, VOC reductions from the four core counties relied upon in the five new counties' RFP plan (1) must be after the baseline year and meet the other criteria for credibility under section 182(b)(1) of the Act, (2) not have been relied upon in the four core counties' RFP plan, and (3) cover the six-year period. For more information please see our Technical Support Document (TSD).

Pursuant to CAA section 172(c)(9), RFP plans must include contingency measures that will take effect without further action by the State or EPA, which includes additional controls that would be implemented if the area fails to reach the reasonable further progress milestones. While the Act does not specify the type of measures or quantity of emissions reductions required, EPA provided guidance interpreting the Act that implementation of these contingency measures would provide additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) in the year following the RFP milestone year. For more information on contingency measures please see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the November 29, 2005 Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). RFP plans must also include a MVEB, which is the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP.

IV. What Is EPA's Evaluation of the Revision?

EPA has reviewed the revision for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. For a full discussion of our evaluation, please see our TSD.

A. Texas Has an Approvable Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1) require an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. EPA strongly recommended using 2002 as the base year emissions inventory. Texas has developed a 2002 Base Year Inventory for the DFW nonattainment area. The 2002 Base Year Inventory includes all point, area, non-road mobile, and on-road mobile source emissions in all of the nine counties. On May 13, 2005 Texas submitted the 2002 base year inventory to EPA as part of a SIP revision for the DFW 8-hour ozone non-attainment area. EPA reviewed the 2002 base year inventory and determined that it was developed in accordance with EPA guidelines. A **Federal Register** Notice approving the 2002 base year inventory was published on August 15, 2008 (73 FR 47835).

However, since that revision was submitted to EPA, more accurate data became available and improved calculation methods have been developed. Because of these changes, the RFP SIP revision updates emissions data for the base year 2002. EPA has determined that the inventory was developed in accordance with EPA guidance on emission inventory preparation, and that the revised 2002 Base Year Emissions Inventory is approvable. Table 1 lists the Emissions Inventory for the DFW area. For more detail on how emissions inventories were estimated, see the Technical Support Document.

[2] Reasonable further progress regulations are at 40 CFR 51.910, and emissions inventory regulations are at 40 CFR 51.915.

TABLE 1—DFW 2002 RFP BASE YEAR EMISSIONS INVENTORY

Source type	VOC			NO_X		
	4 Core counties	5 New counties	9 County total	4 Core counties	5 New counties	9 County total
Base Year Emissions Inventory (Tons/Day)						
Point	18.73	7.69	26.42	34.55	44.70	79.25
Area	205.07	32.34	237.41	34.96	2.08	37.04
On-road Mobile	143.28	18.32	161.60	296.01	60.22	356.23
Non-road Mobile	108.63	10.97	119.60	117.22	17.45	134.67
Total	475.71	69.32	545.03	482.74	124.45	607.19

B. Adjusted Base Year Inventory and 2008 RFP Target Levels

The 2002 base year emissions inventory referenced above is also known as the ''base year inventory,'' and is the starting point for calculating RFP. Next, section 182(b)(2)(C) explains that the baseline from which emission reductions are calculated should be determined as outlined pursuant to CAA section 182(b)(1)(B). Section 182(b)(1)(B) and 40 CFR 51.910 require that the base year inventory must be adjusted to exclude certain emissions specified in CAA section 182(b)(1)(D). This requires that the baseline exclude emission reductions due to Federal Motor Vehicle Control Programs (FMVCP) promulgated by the Administrator by January 1, 1990, and emission reductions due to the regulation of Reid Vapor Pressure promulgated by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990. These measures are not creditable.

The result (after the adjustment) is the ''adjusted base year inventory.'' The required RFP 15% reduction is calculated by multiplying the adjusted base year inventory by 0.15. This figure is subtracted from the adjusted base year inventory, resulting in the target level of emissions for the milestone year (2008). Tables 2 and 3 feature summaries of the adjusted base year inventories (row c), required 15% reductions (row d), and 2008 target level of emissions (row e), as described above.

Texas has based the 15% plan on NO_X reductions for the four core counties, and VOC reductions for the five new counties, which do not have an approved 15% 1-hour ozone Rate of Progress Plan. To meet the RFP requirement, Texas' plan must provide at least 68.43 tons per day (tpd) reductions in NO_X emissions in the four core counties, and 10.11 tpd reductions in VOC for the five new counties. The VOC reductions may come from anywhere within the 8-hour nonattainment area (40 CFR 51.910(a)(1)(iii)(B)(1)).

TABLE 2—CALCULATION OF DFW REQUIRED NO_X TARGET LEVEL OF EMISSIONS FOR THE FOUR CORE COUNTIES WITH AN APPROVED VOC 15% 1-HOUR OZONE RATE OF PROGRESS PLAN

Description	NO_X 4 core counties (tons/day)
a. 2002 Base Year Inventory	482.74
b. Excluded Emission Reductions	26.52
c. Adjusted Base Year Inventory (a–b)	456.22
d. 15% Reductions (c × 0.15)	68.43
e. 2008 Target (c–d)	387.79

TABLE 3—CALCULATION OF DFW VOC TARGET LEVELS OF EMISSIONS IN TONS PER DAY FOR PORTION WITHOUT AN APPROVED VOC RATE OF PROGRESS PLAN

Description	VOC (5 new counties)
a. 2002 Emission Inventory	69.32
b. Non-creditable Reductions, 2002–2008	1.93
c. 2002 Adjusted to 2008 (a–b)	67.39
d. 15% Reductions (c × 0.15)	10.11
e. 2008 Target (c–d)	57.28

C. The 2008 Projected Emissions Inventories and How the Total Required 15% Reductions Are Achieved in the Four Core Counties and the Five New Counties

Next, section 182(b)(1)(A) requires that States need to provide sufficient control measures in their RFP plans to offset any emissions growth. To do this the State must estimate the amount of growth that will occur between 2002 and the end of 2008. The State uses population and economic forecasts to estimate how emissions will change in the future. Generally, the State followed our standard guidelines in estimating the growth in emissions. EPA's MOBILE 6.2.03 was used to develop the 2008 on-road inventory. For more detail on how emissions growth was estimated, see the TSD. Texas terms the projections of growth as the RFP 2008 Uncontrolled Inventories.

Texas then estimates the projected emission reductions from the control measures in place between 2002 and the end of 2008 and applies these to the RFP 2008 Uncontrolled Inventories; the results are the RFP 2008 Controlled Inventories. The total amount of VOC and NO_X emissions in the RFP 2008 Controlled Inventories must be equal to or less than the 2008 target inventories (listed at row e in Tables 2 and 3, above). The RFP plan relies on a number of state and federal control measures intended to reduce NO_X and VOC emissions. The control measures address emissions from point, area, mobile non-road, and mobile on-road sources.

The majority of point source reductions are from the addition of NO_X controls at electric generating units in the four core counties and VOC controls on surface coating sources in the five new counties. Area source VOC reductions for the five new counties include (1) surface coating controls for automobile refinishing, factory finished wood, wood furniture, metal cans, metal coils, and machinery and equipment, (2) the State's Stage I program, and (3) the State's portable fuel container rule. The four core counties did not rely upon any area source NO_X reductions.

The mobile non-road emission reductions for the four core counties were a result of implementing federal measures, including the Tier I and II Locomotive NO_X standards, the heavy-duty non-road engines standards, the Tier 1, 2, and 3 non-road diesel engines standards, the small non-road SI engines Phase II standards, and the large non-road SI and recreational marine standards. The five counties relied upon the following federal measures for the

mobile non-road emission reductions: the new non-road SI engines standards, the heavy-duty non-road engines standards, the Tier 1, 2, and 3 non-road diesel engines standards, the small non-road SI engines Phase II standards, the large non-road SI and recreational marine standards, and non-road RFG. For all of the counties, emissions from locomotives, aircraft and support equipment, and commercial marine vessels were calculated outside of the NONROAD 5 model using EPA approved methodologies. EPA finds that the State's projected emissions and emission reductions for these three non-road mobile sources are acceptable.

Reductions in mobile on-road emissions for the four core counties resulted from fleet turnover due to Tier 1 and Tier 2 of the FMVCP, the Federal RFG, the Federal NLEV, the 2007 Heavy Duty Diesel FMVCP, and the State's I/M Program. The mobile on-road emission reductions for the five counties were from fleet turnover due to Tier 1 and Tier 2 of the FMVCP, surplus VOC emission reductions in the four core counties from the Tier 1 FMVCP, the Federal NLEV, the 2007 Heavy Duty Diesel FMVCP, and the State's I/M program. Each of the State measures relied upon in this plan have been approved in separate actions. See the TSD for more details.

As a result, for NO_X the target level of emissions is 387.79 tpd, and the 2008 projected inventory after RFP reductions are applied is 374.09 tpd. For VOC, the target level of emissions is 57.28 tpd, and the 2008 projected inventory after RFP reductions are applied is 54.72 tpd. As illustrated in Table 4, for both pollutants the 2008 projection inventory is less than the target level of emissions. Therefore, the control measures included in the 2008 projection inventory are adequate to meet the 15% RFP requirement.

TABLE 4—SUMMARY OF RFP DEMONSTRATION FOR DFW

Inventory	NO_X (tons/day) 4 core counties	VOC (tons/day) 5 new counties
2008 Target	387.79	57.28
2008 Uncontrolled Emissions	651.85	90.02
2008 RFP Emission Reductions	277.76	*35.30
2008 Projected Emissions after RFP Reductions	374.09	54.72
RFP Met?	Yes	Yes

*VOC reductions from the Federal Motor Vehicle Control Program in the 4 core counties were used to help meet the RFP emission reduction target for the 5 new counties.

D. The Reasonable Further Progress Plan Includes Acceptable RFP Contingency Measures

The 1997 8-hour ozone RFP plan for a moderate nonattainment area must include contingency measures, which are additional controls to be implemented if the area fails to make reasonable further progress. Contingency measures are intended to achieve reductions over and beyond those relied on in the RFP demonstration and could include federal and state measures already scheduled for implementation. The CAA does not preclude a state from implementing such measures before they are triggered. EPA interprets the CAA to require sufficient contingency measures in the RFP submittal, so that upon implementation of such measures, additional emission reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved between the milestone year of 2008 and the next calendar year, i.e., 2009.

Texas used federal and state measures currently being implemented to meet the contingency measure requirement for the DFW RFP SIP. These measures, which are the same measures used for RFP, provide reductions that are in excess of those needed for RFP. As shown in Table 5, in both the four core counties and the five new counties, the excess reductions are greater than 3% of the adjusted base year inventories. Therefore these reductions are sufficient as contingency measures.

TABLE 5—RFP CONTINGENCY MEASURE DEMONSTRATION FOR DFW RFP SIP

Description	NO_X 4 core counties (tons/day)	VOC 5 new counties (tons/day)
a. Adjusted Base Year Inventory (from Tables 2 and 3)	456.22	67.39
b. 3% Needed for Contingency (a × 0.03)	13.69	2.02
c. Excess Reductions Used for Contingency	13.70	2.56
d. Contingency Met?	Yes	Yes

E. The RFP Milestone 2008 Motor Vehicle Emissions Budget (MVEB) Are Approvable

The 1997 8-hour ozone RFP plan must include MVEBs for transportation conformity purposes. Texas submitted its RFP MVEBs for VOCs and NO_X. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, delay reaching reasonable further progress milestones, or delay timely attainment of the NAAQS. A MVEB is the maximum amount of emissions allowed in the SIP for on-road motor vehicles. The MVEB is the mechanism to determine if the future transportation plans conform to the SIP. The MVEB establishes an emissions ceiling for the regional transportation network. The DFW RFP SIP contains VOC and NO_X MVEBs for the RFP milestone year 2008. The emissions budget for VOC is 119.81 tpd, and the NO_X emissions budget is 249.33 tpd. On-road emissions must be shown in future transportation plans to be less than the MVEB for 2008 and subsequent years. The VOC and NO_X RFP emissions budgets are acceptable

because when added to the other components of the 2008 emissions inventory (including non-road, stationary source, and area source emissions) the total level of emissions is below the 2008 RFP emissions target level. We found the RFP MVEBs (also termed transportation conformity budgets) adequate and on June 28, 2007, the availability of these budgets was posted on our website for the purpose of soliciting public comments. The comment period closed on July 30, 2007, and we received no comments. On March 21, 2008, we published the Notice of Adequacy Determination for these RFP MVEBs (73 FR 15152). Once determined adequate, these RFP budgets must be used in future DFW transportation conformity determinations. The adequacy determination represents a preliminary finding by EPA of the acceptability of the MVEB. Today we are finding the MVEBs are fully consistent with RFP, and the RFP plan is fully approvable, as it sets the allowable on-road mobile emissions the DFW area can produce and continue to demonstrate RFP.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: September 26, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. The second table in § 52.2270 (e), the table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding two new entries to the end of the table for ''Reasonable Further Progress Plan'', for the Dallas/Fort Worth, TX area. The addition reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State approval/ submittal date	EPA approval date	Comments
* *	* *	*	*	*
Approval of the 1997 8-hour Ozone 15% Reasonable Further Progress Plan, and 2008 RFP Motor Vehicle Emission Budgets.	Dallas/Fort Worth, TX	05/23/07	10/07/08 [Insert *FR* page number where document begins].	
Revised 2002 Base Year Emissions Inventory	Dallas/Fort Worth, TX	05/23/07	10/07/08 [Insert *FR* page number where document begins].	

[FR Doc. E8–23673 Filed 10–6–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ–OAR–2008–0411; FRL–8725–9]

RIN 2060–AP01

Consumer and Commercial Products, Group IV: Control Techniques Guidelines in Lieu of Regulations for Miscellaneous Metal Products Coatings, Plastic Parts Coatings, Auto and Light-Duty Truck Assembly Coatings, Fiberglass Boat Manufacturing Materials, and Miscellaneous Industrial Adhesives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of final determination and availability of final control techniques guidelines.

SUMMARY: Pursuant to Section 183(e)(3)(C) of the Clean Air Act, EPA has determined that control techniques guidelines will be substantially as effective as national regulations in reducing emissions of volatile organic compounds in ozone national ambient air quality standard nonattainment areas from the following five Group IV product categories: miscellaneous metal products coatings, plastic parts coatings, auto and light-duty truck assembly coatings, fiberglass boat manufacturing materials, and miscellaneous industrial adhesives. Based on this determination, EPA is issuing control techniques guidelines in lieu of national regulations for these product categories. These control techniques guidelines will provide guidance to the States concerning EPA's recommendations for reasonably available control technology-level controls for these product categories. EPA further takes final action to list the five Group IV consumer and commercial product categories addressed in this notice pursuant to CAA Section 183(e).

DATES: This final action is effective on October 7, 2008.

ADDRESSES: EPA has established the following dockets for these actions: Consumer and Commercial Products, Group IV—Determination to Issue Control Techniques Guidelines in Lieu of Regulations, Docket No. EPA–HQ–OAR–2008–0411; Consumer and Commercial Products—Miscellaneous Metal and Plastic Parts Coatings, Docket No. EPA–HQ–OAR–2008–0412; Consumer and Commercial Products—Auto and Light-Duty Truck Assembly Coatings, Docket No. EPA–HQ–OAR–2008–0413; Consumer and Commercial Products—Fiberglass Boat Manufacturing Materials, Docket No. EPA–HQ–OAR–2008–0415; and Consumer and Commercial Products—Miscellaneous Industrial Adhesives, Docket No. EPA–HQ–OAR–2008–0460. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning the Clean Air Act (CAA) Section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–5460, *fax number:* (919) 541–3470, *e-mail address: moore.bruce@epa.gov.* For further information on technical issues concerning the determination and control techniques guidelines (CTG) documents for miscellaneous metal and plastic parts coatings, or for fiberglass boat manufacturing materials, contact: Ms. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–2509, *fax number:* (919) 541–3470, *e-mail address: whitfield.kaye@epa.gov.* For further information on technical issues concerning the determination and CTG for auto and light-duty truck assembly coatings or the revision of the Automobile Topcoat Protocol, contact: Mr. Dave Salman, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–0859, *fax number:* (919) 541–3470, *e-mail address: salman.dave@epa.gov.* For further information on technical issues concerning the determination and CTG for miscellaneous industrial adhesives, contact: Ms. Martha Smith, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–2421, *fax number:* (919) 541–3470, *e-mail address: smith.martha@epa.gov.*

SUPPLEMENTARY INFORMATION:

Entities Potentially Affected by this Action. The entities potentially affected by this action include industrial facilities that use the respective consumer and commercial products covered in this action as follows:

Category	NAICS code [a]	Examples of affected entities
Miscellaneous metal and plastic parts coatings.	331, 332, 333, 334, 336, 482, 811	Facilities that manufacture and repair fabricated metal, machinery, computer and electronic equipment, transportation equipment, rail transportation equipment.
Auto and light-duty truck assembly coatings.	336111, 336112, 336211	Automobile and light-duty truck assembly plants, producers of automobile and light-duty truck bodies.
Fiberglass boat manufacturing materials.	336612	Boat building facilities.
Miscellaneous industrial adhesives ..	316, 321, 326, 331, 332, 333, 334, 336, 337, 339, 482, 811.	Facilities that manufacture and repair leather and allied products, wood products, plastic and rubber products, fabricated metal, machinery, computer and electronic equipment, transportation equipment, furniture and related products, rail transportation equipment, and facilities involved in miscellaneous manufacturing.
Federal Government	.....	Not affected.
State/local/Tribal government	.....	State, local and Tribal regulatory agencies.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under Section 307(b)(1) of the CAA, judicial review of EPA's listing and final determination is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 8, 2008. Under Section 307(d)(7)(B) of the CAA, only an objection to the final determination that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

Organization of this Document

The information presented in this document is organized as follows:

I. Background Information

A. The Ozone Problem

Ground-level ozone, a major component of smog, is formed in the atmosphere by reactions of volatile organic compounds (VOC)[1] and oxides of nitrogen in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, as well as agricultural crop loss, and damage to forests and ecosystems. Controlled human exposure studies show that acute health effects are induced by short-term (1 to 2 hour) exposures (observed at concentrations as low as 0.12 parts per million (ppm)), generally while individuals are engaged in moderate or heavy exertion, and by prolonged (6 to 8 hour) exposures to ozone (observed at concentrations as low as 0.08 ppm and possibly lower), typically while individuals are engaged in moderate exertion. Transient effects from acute exposures include pulmonary inflammation, respiratory symptoms, effects on exercise performance, and increased airway responsiveness. Epidemiological studies have shown associations between ambient ozone levels and increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits. Groups at increased risk of experiencing elevated exposures include active children, outdoor workers, and others who regularly engage in outdoor activities. Those most susceptible to the effects of ozone include those with pre-existing respiratory disease, children, and older adults. The literature suggests the possibility that long-term exposures to ozone may cause chronic health effects (e.g., structural damage to lung tissue and accelerated decline in baseline lung function).

B. Statutory and Regulatory Background

Under CAA Section 183(e), EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the National Ambient Air Quality Standards (NAAQS) for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) of the CAA directs EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that

[1] See EPA's definition of VOC at 40 CFR 51.100(s).

violate the NAAQS for ozone (i.e., ozone nonattainment areas), and to divide the list of categories to be regulated into four groups. EPA published the initial list in the **Federal Register** on March 23, 1995 (60 FR 15264). In that notice, EPA stated that it may amend the list of products for regulation, and the groups of product categories, in order to achieve an effective regulatory program in accordance with the EPA's discretion under CAA Section 183(e).

EPA has revised the list several times. See 70 FR 69759 (November 17, 2005); 64 FR 13422 (March 18, 1999); and 71 FR 28320 (May 16, 2006). In the May 2006 revision, EPA added one product category, portable fuel containers, and removed one product category, petroleum dry cleaning solvents. As a result of these revisions, Group IV of the list comprises five product categories: miscellaneous metal products coatings, plastic parts coatings, auto and light-duty truck assembly coatings, fiberglass boat manufacturing materials, and miscellaneous industrial adhesives. Pursuant to the court's order in *Sierra Club* v. *EPA,* 1:01–cv–01597–PLF (D.C. Cir., March 31, 2006), EPA must take final action on the product categories in Group IV by September 30, 2008. On July 14, 2008, EPA published its proposed determination that a CTG is substantially as effective as a regulation for each of these five categories and announced availability of four draft CTGs (miscellaneous metal products coatings and plastic parts coatings are addressed in one CTG referred to as ''miscellaneous metal and plastic parts coatings''). See 73 FR 40230.

Any regulations issued under CAA Section 183(e) must be based on ''best available controls (BAC).'' CAA Section 183(e)(1)(A) defines BAC as ''the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.'' CAA Section 183(e) also provides EPA with authority to use any system or systems of regulation that EPA determines is the most appropriate for the product category. Under these provisions, EPA has previously issued ''national'' regulations for autobody refinishing coatings, consumer products, architectural coatings, portable fuel containers, and aerosol coatings.[2]

CAA Section 183(e)(3)(C) further provides that EPA may issue a CTG in lieu of a national regulation for a product category where EPA determines that the CTG will be ''substantially as effective as regulations'' in reducing emissions of VOC in ozone nonattainment areas. The statute does not specify how EPA is to make this determination, but does provide a fundamental distinction between national regulations and CTGs.

Specifically, for national regulations, CAA Section 183(e) defines regulated entities as:

> (i) . . . manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or (ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

Thus, under CAA Section 183(e), a regulation for consumer or commercial products is limited to measures applicable to manufacturers, processors, distributors, or importers of consumer and commercial products supplied to the consumer or industry. CAA Section 183(e) does not authorize EPA to issue national regulations that would directly regulate end-users of these products. By contrast, CTGs are guidance documents that recommend reasonably available control technology (RACT) measures that States can adopt and apply to the end users of products. This dichotomy (i.e., that EPA cannot directly regulate end-users under CAA Section 183(e), but can address end-users through a CTG) created by Congress is relevant to EPA's evaluation of the relative merits of a national regulation versus a CTG.

C. Significance of Control Techniques Guidelines Documents (CTGs)

CAA Section 172(c)(1) provides that State implementation plans (SIPs) for nonattainment areas must include ''reasonably available control measures (RACM),'' including RACT, for sources of emissions. CAA Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment.

EPA defines RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility, 44 FR 53761 (September 17, 1979).'' In subsequent notices, EPA has addressed how States can meet the RACT requirements of the CAA. Significantly, RACT for a particular industry is determined on a case-by-case basis, considering issues of technological and economic feasibility.

EPA provides States with guidance concerning what types of controls could constitute RACT for a given source category through issuance of a CTG. The recommendations in the CTG are based on available data and information and may not apply to a particular situation based upon the circumstances of a specific source. States can follow the CTG and adopt State regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either event, States must submit their RACT rules to EPA for review and approval as part of the SIP process. EPA will evaluate the rules and determine, through notice and comment rulemaking in the SIP approval process, whether the submitted rules meet the RACT requirements of the CAA and EPA's regulations. To the extent a State adopts any of the recommendations in a CTG into its State RACT rules, interested parties can raise questions and objections about the substance of the guidance and the appropriateness of the application of the guidance to a particular situation during the development of the State rules and EPA's SIP approval process.

We encourage States in developing their RACT rules to consider carefully the facts and circumstances of the particular sources in their States because, as noted above, RACT is determined on a case-by-case basis, considering issues of technological and economic feasibility. For example, a State may decide not to require 90 percent control efficiency at facilities that are already well controlled, if the additional emission reductions would not be cost-effective. States may also want to consider reactivity-based approaches, as appropriate, in developing their RACT regulations.[3] Finally, if States consider requiring more stringent VOC content limits than those recommended in the CTGs, States may also wish to consider averaging, as appropriate. In general, the RACT requirement is applied on a short-term

[2] See 63 FR 48806, 48819, and 48848 (September 11, 1998); 72 FR 8428 (February 26, 2007); and 73 FR 15604 (March 24, 2008).

[3] ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans,'' 70 FR 54046 (September 13, 2005).

basis up to 24 hours.[4] However, EPA guidance addresses averaging times longer than 24 hours under certain conditions.[5] The EPA's ''Economic Incentive Policy'' [6] provides guidance on use of long-term averages with regard to RACT and generally provides for averaging times of no greater than 30 days. Thus, if the appropriate conditions are present, States may wish to consider the use of averaging in conjunction with more stringent limits. Because of the nature of averaging, however, we would expect that any State RACT rules that allow for averaging also include appropriate recordkeeping and reporting requirements.

By this action, we are taking final action to list the five Group IV consumer and commercial product categories addressed in this notice pursuant to CAA Section 183(e). Further, we are issuing final CTGs that cover these five product categories in Group IV of the CAA Section 183(e) list. These CTGs are guidance to the States and provide recommendations only. A State can determine what constitutes RACT for these product categories, and EPA will review the State's rules reflecting RACT in the context of the SIP process and determine whether those rules meet the RACT requirements of the CAA and its implementing regulations.

Finally, CAA Section 182(b)(2) provides that a CTG issued after 1990 specify the date by which a State must submit a SIP revision in response to the CTG. In the CTGs at issue here, EPA provides that States should submit their SIP revisions within one year of the date that the CTGs are finalized.

II. Significant Changes to the Final CTGs

In response to comments, we have made certain changes to the final CTGs for the Group IV consumer and commercial product categories. Specifically, we have included definitions to clarify the scope of certain types of products to which our recommended VOC limits apply. Further, for various reasons described below, we have either added recommended VOC limits specifically for certain specialty product categories that would have otherwise been covered by more generic VOC limits recommended in the CTG, or changed our draft recommended VOC limits for certain specialty products. We also recommended not applying the recommended limits to certain low-volume materials supplied in small containers and clarified that the recommended limits do not apply to aerosol spray cans. These changes, which are described in more detail below, do not affect our proposed determination in the July 14, 2008 notice that a CTG is substantially as effective as a national rule for addressing VOC emissions from the Group IV consumer and commercial products in ozone nonattainment areas. None of the comments raised issues with any of the rationales we provided in support of our proposed determination. Further, because the above-mentioned changes to our recommended limits make up only a very small percentage of the consumer and commercial products listed under CAA Section 183(e) Group IV, we do not believe that these changes alter the VOC emission reductions discussed in the July 14, 2008 notice in any material way. Thus, the rationales we expressed in the July notice in support of the determination are unaffected by these changes. For the reasons described in the July 2008 notice and this document, we have determined that CTGs are substantially as effective as national rules for these Group IV consumer and commercial products.

Provided below is a summary of the changes made in each of the final CTGs addressed in this notice.

A. Miscellaneous Metal and Plastic Parts Coatings

To further clarify the scope of each category for which we recommend specific VOC limits, the final CTG includes a definition for each of the coating categories with recommended VOC limits. These definitions are adopted from the South Coast Air Quality Management District (SCAQMD) and Michigan rules that are the basis for the recommended VOC limits.

In response to public comments, we have added to our recommendations in the final CTG specific VOC limits for eight categories of pleasure craft (i.e., recreational boats) surface coatings based on SCAQMD Rule 1106.1. We learned from the commenters that VOC limits for pleasure craft are covered under SCAQMD Rule 1106.1 (February 12, 1999), and not under SCAQMD Rules 1107 and 1145, on which the recommended VOC limits in the draft CTG were based. The commenters also noted that pleasure craft surface coatings can not achieve the limits in SCAQMD Rules 1107 and 1145 and at the same time meet performance requirements for use in marine environments. In response to these comments, we reviewed the VOC limits for pleasure craft surface coatings in SCAQMD Rule 1106.1 and found that they reflect the RACT level of control for these coatings. These limits are the same as those in several other California Districts. All but three of these limits have been in place since 1994 and the remaining three (extreme high gloss coatings, finish primer/surfacer, and non-aluminum antifoulant coatings) have been in effect since 2001. There is no indication that the SCAQMD Rule 1106.1 VOC limits recommended by the commenters are unachievable or unreasonable for sources outside these California Districts. We are also not aware of any pleasure craft surface coating operation performing under VOC limits lower than those provided in SCAQMD Rule 1106.1. For the reasons stated above, we recommend in the final CTG the VOC limits in SCAQMD Rule 1106.1 for pleasure craft surface coatings to address these coatings' unique performance requirements.

In the draft CTG, we requested comment on whether certain materials (sealers, deadeners, transit coatings, and cavity waxes) used at automobile and light-duty truck assembly plants that were included in the miscellaneous metal and plastic parts coatings category and addressed in the draft CTG for miscellaneous metal and plastic parts coatings should instead be included in the auto and light-duty truck assembly coatings category and addressed in the CTG for that category. All commenters on the draft CTG responded that recommendations for these materials should be in the auto and light-duty truck assembly coatings category and addressed in the CTG for that category to simplify implementation and compliance and to clarify EPA's recommendations for these materials.

In response to these comments, we have clarified in the final auto and light-duty truck assembly coatings CTG that it covers the following materials: automobile and light-duty truck cavity wax, automobile and light-duty truck sealers, automobile and light-duty truck deadeners, automobile and light-duty truck gasket/gasket sealing material, automobile and light-duty truck

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[4] See, e.g., 52 FR 45108, col. 2, ''Compliance Periods'' (November 24, 1987). ''VOC rules should describe explicitly the compliance timeframe associated with each emission limit (e.g., instantaneous or daily). However, where the rules are silent on compliance time, EPA will interpret it as instantaneous.''

[5] Memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, January 20, 1984, ''Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy.''

[6] ''Improving Air Quality with Economic Incentive Programs, January 2001,'' available at *http://www.epa.gov/region07/programs/artd/air/policy/search.htm.*

underbody coatings, and automobile and light-duty truck lubricating wax/compound. For further discussion on how we address these materials, please see section II.B of this notice and the final auto and light-duty truck assembly coatings CTG.

Similar materials are used in the production of vehicles other than automobiles or light-duty trucks, or are related to the production of a new automobile or new light-duty truck at a facility that is not an automobile or light-duty truck assembly coatings facility. These materials are included as ''motor vehicle'' materials in the miscellaneous metal and plastic parts coatings category and addressed in the final CTG for this category. The same limits that are recommended for ''automobile and light-duty truck'' materials in the auto and light-duty truck assembly coatings CTG are recommended for ''motor vehicle'' materials in this CTG. Please see section II.B of this notice for the rationale for these recommended limits.

The recommended VOC emission limits in the final miscellaneous metal and plastic parts coatings CTG for the motor vehicle materials described above are as follows (grams VOC per liter of coating, less water and exempt compounds,[7] g/l):

- Motor vehicle cavity wax—650 g/l.
- Motor vehicle sealer—650 g/l.
- Motor vehicle deadener—650 g/l.
- Motor vehicle gasket/gasket sealing material—200 g/l.
- Motor vehicle underbody coating—650 g/l.
- Motor vehicle lubricating wax/compound—700 g/l.
- Motor vehicle trunk interior coating—650 g/l.
- Motor vehicle bedliner—200 g/l.

In the final CTG, we revised the recommended VOC content limit for high performance architectural coatings. The limit for this category in the draft CTG was 3.5 lb VOC/gallon, less water and exempt compounds. We received a comment that there are no liquid high performance architectural coatings available today that can meet this limit. The commenter suggested a limit of 6.2 lb VOC/gallon. According to the commenter, reformulated liquid coatings can meet this limit, and further reformulation may not be technically feasible while still meeting the requisite performance characteristics for high performance architectural coatings. The commenter also referenced the organic HAP content limit for these coatings in the Miscellaneous Metal Parts and Products NESHAP, 40 CFR part 63, subpart MMMM. The commenter noted that the NESHAP limit is consistent with a VOC content of 6.2 lb VOC/gallon. The commenter also noted that converting from a liquid coating to a powder coating or installing and operating add-on controls would be necessary in order to meet the VOC limit recommended for this coating category in the draft CTG, and that each of these approaches would be cost prohibitive. The commenter therefore argued that the VOC limit for high performance architectural coatings recommended in the draft CTG is not reflective of RACT for these coatings.

We agree with the commenter that liquid high performance architectural coatings currently available and in use today contain significantly more than 3.5 lb VOC/gallon. We believe that the cost of converting to powder coatings or installing and operating add-on controls to meet a limit of 3.5 lb VOC/gallon generally would be unreasonable compared to the emission reduction that would be achieved. We further agree with the commenter that a limit of 6.2 lb VOC/gallon can be achieved by the liquid high performance architectural coatings currently available and in use today and that further reformulation may not be technically feasible. In light of all of the above, we believe that the 6.2 lb VOC/gallon limit represents RACT for high performance architectural coatings. Accordingly, in the final CTG, we revised our recommended VOC limit for high performance architectural coatings to be 6.2 lb/gal.

In the draft CTG, we recommended that VOC limits for red and black coatings used for automotive/transportation plastic parts could be 15 percent higher than for other colors. Higher limits were allowed for red and black coatings because the organic pigments used for these colors absorb oil and require more VOC to maintain proper coating viscosity. Commenters requested that the same allowance should also be made for yellow coatings since these coatings now use organic pigments instead of inorganic pigments, and these organic pigments also absorb oil and require more VOC to maintain proper coating viscosity. The inorganic pigments formerly used in yellow coatings often contain hexavalent chromium. Other environmental and worker health programs restrict the use of hexavalent chromium in pigments because it is a known human carcinogen, and it is being replaced with organic yellow pigments. So as not to create a barrier to the use of organic yellow pigments in place of hexavalent chromium, we are recommending in the final CTG higher VOC limits for yellow coatings used for automotive/transportation plastic parts.

In response to comments on how to determine the VOC content of materials, we recommend in the final CTG that the VOC content of coatings used at miscellaneous metal and plastic part coating facilities be determined using EPA Method 24. In addition, we recommend that manufacturer's formulation data be accepted as an alternative to EPA Method 24. If there is a disagreement between manufacturer's formulation data and the results of a subsequent test, we recommend that States use the test method results unless the facility can make a demonstration to the States' satisfaction that the manufacturer's formulation data are correct.

B. Auto and Light-Duty Truck Assembly Coatings

In the July 2008 notice we requested comment on whether certain materials (sealers, deadeners, transit coatings, cavity waxes, glass bonding primers, and glass bonding adhesives) used at automobile and light-duty truck assembly plants that were included in either the miscellaneous metal and plastic parts coatings categories or the miscellaneous industrial adhesives and addressed in the respective draft CTG should instead be included in the auto and light-duty truck assembly coatings category and addressed in the CTG for this category. All commenters on the draft CTG responded that recommendations for these materials should be in the auto and light-duty truck assembly coatings category and addressed in the CTG for this category to simplify implementation and compliance and to clarify EPA's recommendations for these materials.

In response to these comments, we have clarified in the final auto and light-duty truck assembly coatings CTG that it covers the following materials: Automobile and light-duty truck glass bonding primer, automobile and light-duty truck adhesive, automobile and light-duty truck cavity wax, automobile and light-duty truck sealer, automobile and light-duty truck deadener, automobile and light-duty truck gasket/gasket sealing material, automobile and light-duty truck underbody coating, automobile and light-duty truck trunk interior coating, automobile and light-duty truck bedliner, automobile and light-duty truck weatherstrip adhesive, and automobile and light-duty truck

[7] Exempt compounds are those classified by EPA as having negligible photochemical reactivity as listed in 40 CFR 51.100(s). Exempt compounds are not considered to be VOC.

lubricating wax/compound. To clarify the scope of these materials, the final CTG includes definitions for these materials. It also includes the following recommended VOC emission limits for the application of these materials:

- Automobile and light-duty truck glass bonding primer—900 g/l.
- Automobile and light-duty truck adhesive—250 g/l.
- Automobile and light-duty truck cavity wax—650 g/l.
- Automobile and light-duty truck sealer—650 g/l.
- Automobile and light-duty truck deadener—650 g/l.
- Automobile and light-duty truck gasket/gasket sealing material—200 g/l.
- Automobile and light-duty truck underbody coating—650 g/l.
- Automobile and light-duty truck trunk interior coating—650 g/l.
- Automobile and light-duty truck bedliner—200 g/l.
- Automobile and light-duty truck weatherstrip adhesive—750 g/l.
- Automobile and light-duty truck lubricating wax/compound—700 g/l.

We have provided below a brief summary of our rationale for each of these limits. As discussed in sections II.A and II.D of this notice, similar materials are used in the production of vehicles other than automobiles or light-duty trucks, or are related to the production of a new automobile or new light-duty truck at a facility that is not an automobile or light-duty truck assembly coatings facility. These materials are included as ''motor vehicle'' materials in the miscellaneous metal products, plastic parts coatings, or miscellaneous industrial adhesives categories and addressed in the CTGs for those categories. The same limits that are recommended for ''automobile and light-duty truck'' materials in the auto and light-duty truck assembly coatings CTG are recommended for ''motor vehicle'' materials in those CTGs, and the following rationale applies both to ''automobile and light-duty truck'' materials and ''motor vehicle'' materials.

The draft miscellaneous industrial adhesives CTG recommended a material specific limit of 700 grams of VOC per liter for glass bonding primer (referred to as ''automotive glass adhesive primer'' in that document). Commenters indicated that currently used materials contain up to 900 grams of VOC per liter. Eliminating the use of the materials in the 700 to 900 grams of VOC per liter range may not be technically feasible. The cost of the testing required to confirm material performance and compliance with Federal crash safety standards and windshield integrity requirements would be unreasonable compared to the small emission reduction that would be achieved. As a result, we conclude that the 900 grams of VOC per liter limit recommended in the final CTG is representative of RACT for automobile and light-duty truck glass bonding primer.

The draft CTGs for miscellaneous metal and plastic parts coatings and for miscellaneous industrial adhesives did not have product specific recommendations for automobile and light-duty truck adhesive, automobile and light-duty truck cavity wax, automobile and light-duty truck sealer, automobile and light-duty truck deadener, automobile and light-duty truck gasket/gasket sealing material, automobile and light-duty truck underbody coating, automobile and light-duty truck trunk interior coating, automobile and light-duty truck weatherstrip adhesive, or automobile and light-duty truck lubricating wax/compound. Rather, these materials fell under general product categories in these draft CTGs. For each of these types of materials, commenters provided information on the VOC content of the materials currently in use and asserted that the cost of the testing required to confirm the performance of lower VOC content materials would be unreasonable compared to the small emission reduction that would be achieved. We agree with the commenter's assertion and conclude that the limits recommended for these materials in the final CTG are representative of RACT.

Bedliner is an air dried multi-component coating typically applied by vehicle dealers or aftermarket applicators. In the draft CTG for miscellaneous metal and plastic parts coatings, bedliner would have fallen under the general multi-component coating category which had a recommended limit of 340 grams of VOC per liter. One commenter indicated that bedliner is applied at some of its automobile and light-duty truck assembly plants. We are not aware of any other automobile and light-duty truck assembly plants that apply bedliner. The bedliner applied at the commenter's plants contains less than 200 grams of VOC per liter. This is similar to the VOC content of aftermarket bedliner in the miscellaneous metal products, or plastic parts coatings categories and addressed in the CTG for miscellaneous metal and plastic parts coatings. As a result, we conclude that the 200 grams of VOC per liter limit recommended in the final CTG for auto and light-duty truck assembly coatings is representative of RACT for automobile and light-duty truck bedliner.

We also revised the final auto and light-duty truck assembly coatings CTG to recommend not applying the recommended limits to materials that are supplied to the automobile and light-duty truck assembly plants in containers with a net volume of 16 ounces or less, or a net weight of one pound or less. We made this change in response to comments that these low volume materials have small VOC emissions and the cost of controlling them outweighs the emission reductions that could be achieved. We agree with this assessment.

In response to comments on how to determine the VOC content of materials, we recommend in the final CTG that the VOC content of coatings, other than reactive adhesives, used at automobile and light-duty truck assembly plants be determined using EPA Method 24. We recommend that the procedure for reactive adhesives in Appendix A of the NESHAP for surface coating of plastic parts (40 CFR Part 63, subpart PPPP) be used to determine the VOC content of reactive adhesives. In addition, we recommend that manufacturer's formulation data be accepted as an alternative to these methods. If there is a disagreement between manufacturer's formulation data and the results of a subsequent test, we recommend that States use the test method results unless the facility can make a demonstration to the States' satisfaction that the manufacturer's formulation data are correct.

Finally, in conjunction with the draft CTG we prepared a draft revision of the Automobile Topcoat Protocol. Commenters supported the revision of the protocol. We are issuing the final revised protocol concurrent with the final CTG.

C. Fiberglass Boat Manufacturing Materials

In response to public comments, several changes were made to the final CTG to clarify the recommended control measures. We clarified that certain non-atomizing resin application technologies, such as fluid impingement technology, meet the recommended resin application equipment specifications under certain recommended compliance options. We also revised the description of ''hand application'' to include non-spray and non-atomizing application methods similar to hand- or mechanically-powered caulking guns (e.g., similar to those used to apply bonding putty), brush, and direct hand application.

These are low-emission application methods used by many boat builders.

In the final CTG, we clarified that polyester bonding putties are included in the fiberglass boat manufacturing materials category and addressed in the final CTG for this category. We explained that these putties, which are made from a mixture of resin and filler, are not considered adhesives since they are part of the composite structure. However, no VOC content limits are recommended for polyester bonding putties in the final fiberglass boat manufacturing CTG, but we do recommend covers for mixing containers used to prepare these putties. Because these putties are encapsulated between the parts or surfaces they are bonding, minimal area is exposed to the air and most of the styrene is incorporated into the cured resin matrix. Therefore, VOC emissions from these putties are inherently low. For this reason, polyester bonding putties are not subject to HAP limits, which are based on styrene and methyl methacrylate (MMA) emissions in the Boat Manufacturing NESHAP, 40 CFR part 63, subpart VVVV. Similarly, no VOC content limits are recommended for these materials in the final CTG, but covers are recommended for the putty mixing containers.

The final CTG also does not include recommended VOC limits for resin and gel coat used for mold and part touch up and repair. No VOC limits are recommended because these materials are used in small volumes (e.g., just an ounce or two at a time); therefore, VOC emissions from these materials are quite low. Further, these materials need to have higher VOC contents so that the repairs will bond to the existing mold or part. For these reasons, resin and gel coat used for mold and part touch up and repair are not subject to HAP content limits in the boat manufacturing NESHAP; however, under the NESHAP, they are subject to a usage limit and must not account for more than 1 percent of the total resin and gel coat used at a facility. Similarly, no VOC limits are recommended for these materials in the final CTG, but we are also recommending that resin and gel coat used for mold and part touch up and repair not exceed 1 percent by weight of all resin and gel coat used at a facility on a 12-month rolling-average basis.

In response to public comments, we are revising the VOC content limits for resins and gel coats such that they now consist of a monomer VOC content limit and a limit on the non-monomer VOC content. We received comments that compliance with our recommended VOC limits, which were equal to the HAP content limits in the NESHAP, may not be feasible because the VOC content in resins and gel coats may be greater than the HAP content. As previously explained in the draft CTG, the NESHAP HAP content limits were based on styrene and MMA contents in resins and gel coats. Because nearly all VOC in resins and gel coats used in fiberglass boat manufacturing are styrene and MMA, we recommended the NESHAP HAP content limits as the VOC limits in the draft CTG. However, commenters noted that the VOC content of resins and gel coats may exceed the HAP content since these materials may include a small percent of non-HAP VOC, about 0.5 to 5 percent of the total weight of the resin or gel coat. Therefore, it may not be feasible for some materials to achieve the recommended VOC limits in the draft CTG, which only accounted for styrene and MMA.

To resolve this issue, the final CTG recommends a control option to address all VOC in these materials based on monomer VOC and non-monomer VOC. Monomer VOCs react in a chemical cross linking reaction to convert these materials from liquids to solids. The only monomer VOCs in these materials that we have identified are styrene and MMA. According to the commenters, other VOC that are not monomers may be present in these materials at 0.5 to 5 percent by weight of the resin and gel coat. In light of the above information, we recommend in the final CTG that States adopt the HAP content limits in the NESHAP as monomer VOC content limits. In addition, we recommend that the States limit the non-monomer VOC content of resins and gel coats to 5 percent by weight of the resin or gel coat. If the non-monomer VOC content exceeds 5 percent, we recommend that the amount over 5 percent be counted toward the monomer VOC content of the material. For example, if a resin contained 34 percent monomer VOC, but 6 percent non-monomer VOC, then the resin would be treated in each recommended compliance option as if it had a monomer VOC content of 35 percent because of the 1 percent non-monomer VOC that was over the 5 percent recommended limit for non-monomer VOC.

In response to comments on how to determine the VOC content of materials, we recommend in the final CTG that the monomer VOC content of resin and gel coat materials be determined using SCAQMD Method 312–91, Determination of Percent Monomer in Polyester Resins. In addition, we recommend that manufacturer's formulation data be accepted as an alternative to this method. If there is a disagreement between manufacturer's formulation data and the results of a subsequent test, we recommend that States use the test method results unless the facility can make a demonstration to the States' satisfaction that the manufacturer's formulation data are correct.

D. Miscellaneous Industrial Adhesives

We revised the final CTG to recommend not applying the recommended limits to materials that are supplied to the facilities operating miscellaneous industrial adhesive application processes in containers with a net volume of 16 ounces or less, or a net weight of one pound or less. We made this change in response to comments that these low volume materials have small VOC emissions and the cost of controlling them outweighs the emission reductions that could be achieved. We agree with this assessment. This is also consistent with the small container exemption in the Ozone Transport Commission (OTC) model rule.

In response to comments on how to determine the VOC content of materials, we recommend in the final CTG that the VOC content of adhesives, other than reactive adhesives, used at facilities operating miscellaneous industrial adhesive application processes be determined using EPA Method 24. We recommend that the procedure for reactive adhesives in Appendix A of the NESHAP for surface coating of plastic parts (40 CFR part 63, subpart PPPP) be used to determine the VOC content of reactive adhesives. In addition, we recommend that manufacturer's formulation data be accepted as an alternative to these methods. If there is a disagreement between manufacturer's formulation data and the results of a subsequent test, we recommend that States use the test method results unless the facility can make a demonstration to the States' satisfaction that the manufacturer's formulation data are correct.

We also clarified in the final CTG that polyester bonding putties used to assemble fiberglass parts at fiberglass boat manufacturing facilities and at other reinforced plastic composite manufacturing facilities are not included in the miscellaneous industrial adhesives category and are not addressed in the CTG for this category. These bonding putties are part of the composite structure and are not adhesives. For further discussions on these putties, please see section II.C of

this notice and the final fiberglass boat manufacturing materials CTG.

In the final miscellaneous industrial adhesives CTG, we also revised the definition of porous material to exclude wood. In the draft CTG, we recommended separate emission limits for wood application processes and for porous material (except wood) application processes. However, we inadvertently included wood in the definition of porous material in the draft CTG. This was an oversight, and wood has been excluded from the definition of porous material in the final CTG.

We also replaced the term ''tire retreading'' in the CTG with ''tire repair''. This change was made in response to a comment that the OTC model rule, on which the CTG definition was based, uses the term ''tire repair'' for the same definition. We made this change to be consistent with the OTC model rule and to more accurately describe the specific process being defined.

In the draft CTG we requested comment on whether certain materials (glass bonding primers and glass bonding adhesives) used at automobile and light-duty truck assembly plants that were included in the miscellaneous industrial adhesives category and addressed in the draft CTG for miscellaneous industrial adhesives should instead be included in the auto and light-duty truck assembly coatings category and addressed in the CTG for that category. All commenters on the draft CTG responded that recommendations for these materials should be in the auto and light-duty truck assembly coatings category and addressed in the CTG for that category to simplify implementation and compliance and to clarify EPA's recommendations for these materials.

In response to these comments, we have clarified in the final auto and light-duty truck assembly coatings CTG that it covers the following materials: automobile and light-duty truck glass bonding primer, automobile and light-duty truck adhesive, and automobile and light-duty truck weatherstrip adhesive. For further discussion on how we address these materials, please see section II.B of this notice and the final auto and light-duty truck assembly coatings CTG.

Similar materials are used in the production of vehicles other than automobiles or light-duty trucks, or are related to the production of a new automobile or new light-duty truck at a facility that is not an automobile or light-duty truck assembly coatings facility. These materials are included as ''motor vehicle'' materials in the miscellaneous industrial adhesives category and addressed in the final CTG for this category. The same limits that are recommended for ''automobile and light-duty truck'' materials in the auto and light-duty truck assembly coatings CTG are recommended for ''motor vehicle'' materials in this CTG. Please see section II.B of this notice for the rationale for these recommended limits.

The recommended VOC emission limits in the final miscellaneous industrial adhesives CTG for the motor vehicle materials described above are as follows:

- Motor vehicle glass bonding primer—900 g/l.
- Motor vehicle adhesive—250 g/l.
- Motor vehicle weatherstrip adhesive—750 g/l.

Please note that, in the final CTG, the term ''motor vehicle glass bonding primer'' replaces the term ''automotive glass adhesive primer'' provided in the draft CTG. The terms have the same definition, but ''glass bonding primer'' is the term more commonly used in the automotive and motor vehicle industry.

III. Responses to Significant Comments on EPA's Determination

All commenters that addressed EPA's proposed CAA Section 183(e)(3)(C) determination that CTGs will be substantially as effective as national regulations in reducing emissions of VOC in ozone nonattainment areas from the miscellaneous metal products coatings, plastic parts coatings, auto and light-duty truck assembly coatings, and fiberglass boat manufacturing materials product categories agreed with the proposed determination.

In support of EPA's proposed determination and issuance of draft CTGs for these product categories, commenters remarked that the CTG approach would afford industry flexibility to achieve VOC emission reductions while not compromising their ability to meet customer needs. We received comments noting that the CTG approach allows States greater flexibility to tailor regulatory requirements to their specific circumstances. The commenter stated that site-specific factors necessitate the need for flexible controls. According to the commenters, because there can be great variation in the operations of facilities and the environmental conditions in which they operate, State regulators should be granted some latitude to fashion control strategies to address the variables that are inherent to the formation of ground-level ozone in their States. The commenters concluded that the CTG approach affords this flexibility by allowing the use of a variety of mechanisms to achieve emission reductions.

With respect to the miscellaneous industrial adhesives category, we similarly received comments agreeing with EPA's determination that a CTG is substantially as effective as a rule. However, we also received comments supporting the issuance of a national rule rather than a CTG for this product category. These commenters raised no concerns or issues with EPA's rationales for its proposed determination that a CTG is substantially as effective as a rule in reducing VOC emissions from miscellaneous industrial adhesives in ozone nonattainment areas. Rather, the commenters explained that regulation of manufacturers of industrial adhesives would cover a wider variety of materials, and thus achieve greater VOC emissions reductions, than measures limiting emissions from the products at the point of use. The commenters further argued that manufacturers have greater control over the VOC content and associated emissions of industrial adhesives than do users, given that individual industrial adhesives are formulated to perform specific functions and, unlike other coating materials, are not ordinarily thinned or otherwise altered prior to use by the user. The commenters stated that, among the categories of adhesive materials covered in the proposed CTG, a number of them are more likely to be used ''in the field'' or at construction sites rather than in manufacturing facilities. One commenter added that any uncertainty regarding the industry sectors that are covered by the miscellaneous industrial adhesives source category would be resolved by regulating industrial adhesives at the point of manufacture rather than the point of use. The commenter expressed concern that a CTG for adhesives would require enforcement at innumerable manufacturing facilities nationwide, resulting in significant costs. The commenter added that in contrast, a national rule applicable to manufacturers of industrial adhesives would greatly reduce the number of regulated entities and simplify enforcement, and reduce costs.

EPA appreciates the commenters' concerns and suggestions. However, for the following reasons, EPA rejects the commenters' suggestion that EPA should issue a national rule for the Section 183(e) miscellaneous industrial adhesives category. As an initial matter, the scope of adhesives that the commenters suggest that EPA cover under a national rule is broader than the Section 183(e) miscellaneous industrial adhesives category. In EPA's Report to

Congress, *Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory* (EPA–453/R–94–066–B, March 1995), supporting the Section 183(e) consumer and commercial product category list that EPA compiled in 1995 and the schedule for taking action on the listed product categories,[8] the ''miscellaneous industrial adhesives'' product category was clearly described as comprising adhesives used in industrial manufacturing operations. Accordingly, this product category does not include field-applied adhesives (*e.g.*, plastic solvent welding cements used by plumbers to join plumbing pipes on construction jobs in the field).

In the July 2008 notice, EPA proposed to finalize the miscellaneous industrial adhesives product category, as that category was listed in 1995. EPA did not propose to broaden that product category, as EPA had determined that the category properly reflected the scope of sources needed, in conjunction with the other product categories, to meet the requirements of Section 183(e)(3)(A). Petitioners have not alleged or demonstrated that EPA's proposed listing is contrary to the requirements of Section 183(e)(3)(A). EPA therefore takes final action to list the miscellaneous industrial adhesives product category, which again includes those adhesives used in industrial manufacturing operations.

Further, as discussed in the July 14, 2008 notice, the effect of a national rule that sets VOC limits only for miscellaneous industrial adhesives (i.e., adhesives used in industrial manufacturing operations) could be easily subverted because such a rule could not require that a manufacturing facility use only those low-VOC content adhesives materials that are specifically marketed for miscellaneous industrial adhesive application operations. By contrast, the miscellaneous industrial adhesives CTG applies specifically to the products in the Section 183(e) miscellaneous industrial adhesives category, *i.e.*, adhesives used at industrial manufacturing operations.

Moreover, as discussed above and in the July 14, 2008 notice, EPA has identified in the CTG flexible and effective options for controlling VOC emissions from the miscellaneous industrial adhesives category, and these recommended control options are consistent with existing State and local VOC control strategies. The recommended control options, which are directed at the use of these adhesives, can only be implemented through the CTG approach because the regulated entities subject to a national rule would be adhesives manufacturers and suppliers, not the users. The commenters have raised no concerns or issues with EPA's rationales, including those reiterated above, supporting its proposed Section 183(e)(3)(C) determination that a CTG is substantially as effective as a regulation in reducing VOC emissions from miscellaneous industrial adhesives in ozone nonattainment areas. For the foregoing reasons, EPA is finalizing its 183(e)(3)(C) determination for miscellaneous industrial adhesives in this notice.

[8] See ''Consumer and Commercial Products: Schedule for Regulation'' (60 FR 15264, March 23, 1995)

IV. Statutory and Executive Order (EO) Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action,'' since it is deemed to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b). This action does not contain any information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. EPA is taking final action to list the five Group IV consumer and commercial product categories addressed in this notice for purposes of CAA Section 183(e). The listing action alone does not impose any regulatory requirements. EPA has also determined that, for each of the five product categories at issue, a CTG will be substantially as effective as a national regulation in achieving VOC emission reductions in ozone nonattainment areas. This final determination means that EPA has concluded that it is not appropriate to issue Federal regulations under CAA Section 183(e) to regulate VOC emissions from these five product categories. Instead, EPA has concluded that it is appropriate to issue guidance in the form of CTGs that provide recommendations to States concerning potential methods to achieve needed VOC emission reductions from these product categories. In addition to the final determination, EPA is also announcing availability of the final CTGs for these five product categories. These CTGs are guidance documents. EPA does not directly regulate any small entities through the issuance of a CTG. Instead, EPA issues CTGs to provide States with guidance on developing appropriate State regulations to obtain VOC emission reductions from the affected sources within certain nonattainment areas. EPA's issuance of a CTG does trigger an obligation on the part of certain States to issue State regulations, but States are not obligated to issue regulations identical to the EPA's CTG. States may follow the recommendations in the CTG or deviate from them, and the ultimate determination of whether a State regulation meets the RACT requirements of the CAA would be determined through notice and comment rulemaking in the EPA's action on each State's SIP. Thus, States retain discretion in determining to what degree to follow the CTGs.

D. Unfunded Mandates Reform Act

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–

1538 for State, local, or tribal governments or the private sector because it imposes no enforceable duty on any State, local, or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. In addition, we have determined that this rule is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As stated in section IV.C. this action serves to list five product categories, finalize a determination that a CTG will be substantially as effective as a national regulation in achieving VOC emission reductions in ozone nonattainment areas for the five categories, and announce the availability of the final CTGs (i.e., guidance documents) for these five product categories. These actions do not impose any regulatory requirements; therefore, EPA is not directly regulating any small entities. Please refer to section IV.C. for additional details.

E. Executive Order 13132: Federalism

EO 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the EO to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. Thus, EO 13132 does not apply to this rule. However, in the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA solicited comments (see 73 FR 40230, July 14, 2008) from State and local officials. EPA received no adverse comments from State or local governments on these issues.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). It does not have a substantial direct effect on one or more Indian Tribes, in that the listing action and the final determination impose no regulatory burdens on tribes. Furthermore, the listing action and the final determination do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Authority Rule (TAR) establish the relationship of the Federal government and Tribes in implementing the CAA. Thus, EO 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulations. This rule is not subject to EO 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in EO 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. These actions impose no regulatory requirements and are therefore not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency does not use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any populations, including any minority or low-income populations. The purpose of CAA Section 183(e) is to obtain VOC emission reductions to assist in the attainment of the ozone NAAQS. The health and environmental risks associated with ozone were considered in the establishment of the ozone NAAQS. The level is designed to be protective of the public with an adequate margin of safety. EPA's listing of the products and its determination that CTGs are substantially as effective as regulations are actions intended to help States achieve the NAAQS in the most appropriate fashion.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this notice and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the notice in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 7, 2008.

List of Subjects in 40 CFR Part 59

Air pollution control, Consumer and commercial products, Confidential business information, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 30, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 59—[AMENDED]

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 7414 and 7511b(e).

Subpart A—General

■ 2. Section 59.1 is revised to read as follows:

§ 59.1 Final determinations under Section 183(e)(3)(C) of the CAA.

This section identifies the consumer and commercial product categories for which EPA has determined that CTGs will be substantially as effective as regulations in reducing VOC emissions in ozone nonattainment areas:

(a) Wood furniture coatings;

(b) Aerospace coatings;

(c) Shipbuilding and repair coatings;

(d) Lithographic printing materials;

(e) Letterpress printing materials;

(f) Flexible packaging printing materials;

(g) Flat wood paneling coatings;

(h) Industrial cleaning solvents;

(i) Paper, film, and foil coatings;

(j) Metal furniture coatings;

(k) Large appliance coatings;

(l) Miscellaneous metal products coatings;

(m) Plastic parts coatings;

(n) Auto and light-duty truck assembly coatings;

(o) Fiberglass boat manufacturing materials; and

(p) Miscellaneous industrial adhesives.

[FR Doc. E8–23750 Filed 10–6–08; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2238–F]

RIN 0938–AP26

Medicaid Program; Multiple Source Drug Definition

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the definition of ''multiple source drug'' to better conform the regulatory definition to the provisions of section 1927(k)(7) of the Social Security Act. It also responds to public comments received on the March 14, 2008 interim final rule with comment period.

DATES: *Effective Date:* This final rule is effective November 6, 2008.

FOR FURTHER INFORMATION CONTACT: Gail Sexton, (410) 786–4583.

SUPPLEMENTARY INFORMATION:

I. Background

In the July 17, 2007 **Federal Register** we published a final rule with comment period (72 FR 39142) implementing the provisions of the Deficit Reduction Act of 2005 (DRA) pertaining to prescription drugs under the Medicaid Program. In that rule, we codified terms pertaining to the calculation and reporting of average manufacturer price (AMP) and best price and amended existing regulations regarding the calculation of the Federal upper limits (FULs) for certain covered outpatient drugs. The rule was effective October 1, 2007. On March 14, 2008, we issued an interim final rule with comment period (73 FR 13785) that revised the definition of multiple source drug to conform to the statutory provisions. As stated in that rule, the interim final rule with comment period was not issued in response to public comments received on the Medicaid prescription drug rule. We are still considering those comments. On November 15, 2007, the National Association of Chain Drug Stores and the National Community Pharmacists Association filed a motion for a preliminary injunction in the United States District Court for the District of Columbia. They contended, in part, that the definition of ''multiple source drug'' adopted in the Medicaid prescription drug rule is contrary to the statutory language in that it defined a multiple source drug, in part, as a drug which is sold or marketed in the United States, as opposed to the State. Plaintiffs argued that all drugs are not generally available in every State. *National Association of Chain Drug Stores et al.* v. *Health and Human Services,* Civil Action No. 1:07–cv–02017 (RCL). Although we continue to believe that, when an FDA-approved, therapeutically, pharmaceutically, and bioequivalent drug is sold or marketed in the United States, at least one therapeutically, pharmaceutically, and bioequivalent drug is sold or marketed in every State, we issued an interim final rule with comment period to revise the definition of ''multiple source drug.'' We stated that we expected the effect of the revision, if any, to be minimal.

We are publishing this final rule to address comments received on the interim final rule with comment period published on March 14, 2008 (73 FR 13785). Specifically, we are addressing comments pertaining to the definition of ''multiple source drug'' in the March 14, 2008 interim final rule with comment period. For a full discussion of the multiple source drug definition provisions see the March 14, 2008 interim final rule with comment period (73 FR 13785).

As noted in the interim final rule with comment period, this rule to the extent that it may affect Medicaid reimbursement rates for retail pharmacies, is subject to the injunction issued by the United States District Court for the District of Columbia in *National Association of Chain Drug Stores et al.* v. *Health and Human Services,* Civil Action No. 1:07–cv–02017 (RCL).

II. Provisions of the Interim Final Rule

In § 447.502, we defined key terms used for payment and rebates for Medicaid covered outpatient drugs. We defined multiple source drug, with respect to a rebate period, as a covered outpatient drug for which there is at least one other drug product which is: (1) Rated as therapeutically equivalent (for the list of drug products rated as therapeutically equivalent, see the FDA's most recent publication of ''Approved Drug Products with Therapeutic Equivalence Evaluations'' which is available at *http://www.fda.gov/cder/orange/default.htm* or can be viewed at the FDA's Freedom of Information Public Reading Room at 5600 Fishers Lane, rm. 12A–30, Rockville, MD 20857); (2) pharmaceutically equivalent and bioequivalent, as determined by the FDA; and (3) sold or marketed in the United States during the rebate period.

In the March 14, 2008 interim final rule with comment period, we revised the definition of ''multiple source drug'' at § 447.502 to state, in part, that a covered outpatient drug is a multiple source drug when it is sold or marketed in the ''State'' during the rebate period. In accordance with section 1927(k)(7)(C)(iii) of the Social Security Act (''the Act'') and as discussed in the interim final rule with comment period, we consider a drug to be sold or marketed in a State if it appears in a published national listing of average wholesale prices that we have selected—currently, Red Book, Bluebook, or Medi-Span—provided the listed product is generally available to the public through retail pharmacies in that State. We also addressed our belief, based on our experience with the FUL and the drug rebate program that a national market exists for covered outpatient drugs. We also provided in the interim final rule with comment period, that when a covered outpatient drug is not a multiple source drug in the State, that drug is not subject to the FUL in that State for the applicable rebate period. We further provided that where the drug does not qualify as a multiple source drug in the State, the State should apply the appropriate pricing methodologies as set forth in the approved State plan.

III. Analysis of and Responses to Public Comments

We received nine items of correspondence that addressed the March 14, 2008 interim final rule with comment period. We received comments from drug manufacturers and wholesalers, retail pharmacies, and membership organizations. To the extent that comments were outside the scope of the March 14, 2008 interim final rule with comment period they are not addressed in this final rule. A summary of the major issues and our responses are discussed below.

A. General Comments

Comment: We received several comments expressing general support and appreciation for CMS revising the definition of ''multiple source drug.'' One commenter specifically stated that the statutory definition of ''multiple source drug'' has existed since 1990, and it is important for CMS to include that definition in the regulations. One commenter noted that States appreciate the increased flexibility to determine a product's availability and to be able to adjust FUL prices accordingly.

Response: We appreciate these and all comments received relating to our interim final rule with comment period revising the definition of ''multiple source drug.''

B. Adherence to the Administrative Procedures Act

Comment: Several commenters stated that the interim final rule with comment period was not promulgated in accordance with the Administrative Procedure Act (APA) which provides that a Federal agency provide the public with notice of, and an opportunity to comment on, proposed agency rulemaking before issuing a final rule, which includes a statement of basis and purpose that responds to public comments. Several commenters were in disagreement with CMS that a formal notice and comment rulemaking process was not necessary because they said the new rule was not an ''interpretive'' rule, a general statement of policy, and/or a rule of agency procedure or practice.

Response: We disagree. We are applying the definition of ''multiple source drug'' as specified in the statute and informing the public of the procedures and practices the agency will follow to ensure compliance with the statutory provisions. We do not believe that we need to propose a rule to incorporate the words of a provision already contained in the statute, and we therefore found good cause for waiving the notice and comment procedures. We believe that such a proposed rule would not be necessary because we would not be able to change the definition in the rule in response to public comments. In addition, as discussed in the interim final rule with comment period, we believe that the interim final rule with comment period is exempt from notice and comment rulemaking as an interpretative rule, general statement of policy and/or rule of agency procedure or practice.

Furthermore, we have provided an opportunity for comment and have now considered all comments in issuing this final rule.

Comment: One commenter stated that the fact that the Court issued a preliminary injunction against the old rule does not, as a matter of law, constitute good cause to eliminate notice and comment rulemaking. Another commenter stated that CMS had time to go through the notice and comment rulemaking, because the rule cannot be enforced due to Federal court injunction.

Response: We issued the interim final rule with comment period revising the definition of ''multiple source drug'' to better conform the definition to the statutory language and to address the concerns raised by plaintiffs in the Medicaid prescription drug rule litigation. In that litigation, the plaintiffs contended, in part, that the definition of ''multiple source drug'' adopted in the Medicaid prescription drug rule is contrary to the statutory language in that it defined a multiple source drug, in part, as a drug which is sold or marketed in the ''United States'' as opposed to the ''State.'' We issued this rule to apply the definition specified in the statute. We believe it is unnecessary to propose a rule to, in effect, incorporate the words of the statute and to establish a procedure to ensure compliance with that statutory provision.

Furthermore, we have provided an opportunity for comment and have now considered all comments in issuing this final rule.

C. Interpretive Versus Substantive Rule

Comment: Several commenters submitted reasons why they believe that this rule should not be considered an interpretive rule, as explained above, but rather, a substantive rule, and thus subject to notice and comment rulemaking. One commenter stated that this rule should be considered a substantive rule because it will be published in the **Federal Register**. Several commenters stated that this rule amends another substantive rule subject to notice and comment rulemaking, and thus should also be considered substantive. Other commenters stated that rules which affect methodologies for calculating Federal funding levels are substantive rules that are subject to notice and comment under the APA. Several commenters stated that, because the new rule establishes significant new burdens on pharmacies and States regarding the State availability standard that has never been imposed by either the statute or CMS, it must be considered a substantive rule.

Response: We disagree. We issued the March 14, 2008 interim final rule with comment period to revise the Medicaid prescription drug rule to better conform to the statute. The statute includes a provision that a multiple source drug is sold or marketed in the State during the rebate period and a separate provision that describes when a drug is considered to be sold or marketed in a State. We revised the Medicaid prescription drug rule to include these provisions and put forth procedures to ensure compliance with the statute. We consider these provisions to be exempt from notice and comment rulemaking as an interpretive rule, general statement of policy, and/or rule of agency procedure or practice. Moreover, to the extent that notice and comment rulemaking might apply, we found good cause to waive

such requirements given that the revisions were made to revise the rule to better comply with the statute.

Furthermore, we have provided an opportunity for comment and have now considered all comments in issuing this final rule.

D. Definition—Regulation Text Changes

Comment: Several commenters suggested that the term ''multiple source drug'' as it is currently defined should be revised. One commenter stated that CMS should (1) change the introductory portion to read, ''multiple source drug'' means, with respect to a rebate period, a covered outpatient drug for which there ''are at least two drug products which'', and (2) change the initial word of paragraphs (1)–(3) of the definition from ''is'' to ''are.'' Several commenters stated that for CMS to comply with the statute, the term ''covered outpatient drug'' in the rule must be replaced with ''drug product'' in paragraphs 3(i) and 3(ii) of the definition of ''multiple source drug'' to assure that FULs are applied properly.

Response: We have revised the definition of multiple source drug in this final rule in accordance with the language in the Act. We have retained the term ''covered outpatient drug'' in paragraph (3)(ii) of that definition because FULs are set for ''multiple source drugs,'' which under section 1927(k)(7)(A)(i) of the Act are a subset of ''covered outpatient drugs.''

E. Drug Versus Drug Product—Compliance With the Social Security Act

Comment: Several commenters stated that the language of the rule does not follow the language of the statute because the rule does not properly distinguish between a ''drug'' and a ''drug product.'' Several commenters stated that the distinction between drug and drug product is important. Several commenters noted that a ''drug'' is a chemical ingredient contained in one or more drug products but that a ''drug product'' is a ''finished dosage form'' such as a tablet or capsule. The commenters stated that a drug may be generally available to the public through retail pharmacies in a State even though an individual drug product is not generally available to the public through retail pharmacies in a State.

Response: We appreciate the comment and have revised the regulation to conform to the statute. We note, however, that the Act does not distinguish between the terms ''drug'' and ''drug product'' in the manner suggested in these comments.

F. National Availability

Comment: One commenter stated that drug products cannot be assumed to have national availability because regional manufacturers, marketers, distributors and wholesalers may sell exclusively to entities in a specific class of trade and may not make their drug products generally available to any or all pharmacies in a given State or to the general public, even though they are listed in the national compendia. Another commenter stated that there are many instances of limited and sporadic supply of a drug product, particularly in the first year after a new multiple source drug product is introduced to the market, so that not all pharmacies have access to sufficient supply.

Response: We believe, based on our experience with the FUL program that when an FDA-approved, therapeutically, pharmaceutically, and bioequivalent drug product is sold or marketed on a nationwide basis, at least one therapeutically, pharmaceutically, and bioequivalent drug product is generally sold or marketed in every State. However, we have established a process in this rule to determine whether a listed product is generally available through retail pharmacies in a State. If a State concludes that a particular covered outpatient drug has no therapeutically, pharmaceutically, and bioequivalent drug product that is generally available in that State and, as a result, does not meet the definition of a multiple source drug in the State, that drug would not be subject to the FUL in that State. When at least two therapeutically, pharmaceutically, and bioequivalent drug products are generally available to the public through retail pharmacies within the State, the drug will be considered a multiple source drug. In the case where the covered outpatient drug is not a multiple source drug, that drug would not be subject to the FUL in that State for the applicable rebate period.

G. National Availability—Compliance With the Social Security Act

Comment: Several commenters stated that CMS' assumption that drug products are nationally available does not ''interpret'' the statute, but rather contradicts the statute. Other commenters stated that CMS assumes nationwide availability of all drug products without a legal or factual basis for that assumption. Several commenters stated that CMS has not compiled evidence to justify its assumption of national availability. One commenter stated that an assumption that all drug products are available nationwide would render the statute's State availability standard completely superfluous. Another commenter said that the same assumption of national availability was contained in CMS' original definition of ''multiple source drug'' which looked to whether drug products were available ''in the United States'' rather than in each ''State.''

Response: The State availability requirement has been in the Social Security Act since the Omnibus Budget Reconciliation Act of 1990. Nonetheless, we have received few complaints that drug products listed in the national compendia are not widely available, and the few complaints that we have received generally suggested availability problems occurring nationwide, rather than availability problems unique to a particular State. Therefore, in light of our experience with the implementation of section 1927 of the Act, we believe that when an FDA-approved, therapeutically, pharmaceutically, and bioequivalent drug product is sold or marketed on a nationwide basis, that at least one therapeutically, pharmaceutically, and bioequivalent drug product is sold or marketed in every State. However, to the extent that a particular covered outpatient drug has no therapeutically, pharmaceutically, and bioequivalent drug product generally available to the public through retail pharmacies within a State, this rule gives States the flexibility to disregard the FUL for that drug and apply alternate pricing methodologies as set forth in the State's approved plan.

Comment: One commenter stated that a Federal court enjoined implementation of the July 17, 2007 rule's definition of ''multiple source drug'' because it violated the provisions of the statute's State availability standard. Several commenters stated that despite the court's ruling, CMS has made it clear that the agency will continue to ignore the statute's State availability standard and continue to assume that all drugs are available nationally, and that pharmacies and States may enforce the statute's State availability standard, but CMS will not.

Response: We disagree. We have revised the definition of ''multiple source drug'' as it appeared in the Medicaid prescription drug rule to be consistent with statutory language and fully compliant with the court's preliminary ruling. We have not ignored the State availability requirement; we have set forth a mechanism for determining whether a drug is a ''multiple source drug.'' As we stated in the March 14, 2008 interim final rule, when a State confirms that a covered outpatient drug is not a multiple source

drug in that State, that drug is not subject to a FUL in that State. We have further clarified in our final rule that when at least two therapeutically, pharmaceutically, and bioequivalent drug products, covered under the Medicaid drug rebate program, are generally available within the State, the drug will be considered a multiple source drug. In the case where the covered outpatient drug is not a multiple source drug, that drug would not be subject to the FUL in that State for the rebate period. Thus, we have given States increased flexibility to determine a product's availability. We believe that this is the most effective means to ensure that drug products not available in a State are identified and not treated as multiple source drugs.

Comment: A few commenters stated that if Congress had intended that CMS simply assume that equivalent drug products are available nationwide, it would not have adopted a specific process for CMS to confirm availability in each State.

Response: Congress did not adopt a specific process for CMS to confirm State availability but left it to the agency to set forth such a process. We adopted the process set forth in the interim final rule with comment period because we believe that pharmacies and States are in a substantially better position to assess the availability of drugs available for purchase in their areas. For example, the States have daily updated claims files and could validate drug availability in a more timely and efficient manner than could be done at the Federal level. In addition, pharmacies are in the best position to know the drug products to which they have access.

H. State Availability—Compliance With the Social Security Act

Comment: A few commenters stated that this rule does not comply with the Act's ''State availability'' standard, which they state requires CMS to confirm whether particular drug products are generally available to the public through retail pharmacies in each State. A few commenters stated that CMS must actually implement the statutory language by not applying FULs unless it has first confirmed State availability as mandated by the statute. The commenters further stated that the statute does not authorize CMS to calculate and apply FULs and then impose on pharmacies and States the burden of investigating whether particular drug products satisfy the State availability standard. The commenters state that the Federal statute clearly discusses the duty of ''the Secretary'' to apply FULs to multiple source drug products that satisfy the State availability standard.

Response: We disagree. The statute does not prohibit States from assisting in the availability determination or, as noted previously, otherwise set forth any mechanism for determining whether a drug is ''generally available.'' We believe the most efficient means to do so is to have the State make the initial determination that drugs are not generally available in that State. The Act, as amended by the DRA, clearly contemplates the creation of a single nationwide FUL list. To first confirm availability of each and every drug on a State-by-State basis before setting a FUL would render the FUL provisions established by the DRA administratively impossible to implement, and would create an undue burden that would make the publication of a timely list unlikely. This practice would be inconsistent with the statute which provides that the Secretary establish a FUL for each multiple source drug that enters the market on a timely basis.

Comment: Several commenters asserted that CMS incorrectly instructs States that the State availability standard focuses on whether drugs are unavailable to pharmacies, not whether drug products are generally available to the public through retail pharmacies.

Response: We disagree. Since the statute uses the phrase ''generally available to the public through retail pharmacies,'' we have decided that availability to retail pharmacies is a necessary component of the State availability determination. We believe that if a drug is available to a retail pharmacy, then it will be available to the public.

Comment: A commenter stated that CMS has traditionally surveyed manufacturers to determine if products are available before setting a FUL. The commenter stated that he believes that CMS should undertake a similar task to determine whether each dosage form and strength of a multiple source drug is generally available to the public through retail pharmacies in each State.

Response: As noted previously, we do not interpret the law to require us to continually survey drug availability in the retail pharmacies of every State. Such continuous surveys would be burdensome and very time consuming and could likely result in an untimely and outdated FUL list. In addition, such surveys would be inconsistent with our understanding of other statutory amendments in the DRA where Congress contemplated that we establish FULs on a timely basis. For example, section 1927(f)(1) of the Act requires the Secretary's response within 7 days after notification of availability of multiple source products. We also note that pharmacies and States are in a substantially better position to assess the general availability of drugs in their areas.

I. State Availability and FUL Reimbursement

Comment: Several commenters expressed concern about the FUL reimbursement in regard to drug availability in the State. One commenter asked if States will receive an exemption from the FUL retroactively because a State determination concerning the availability of a drug will presumably be after a FUL effective date, and after CMS confirms availability issues. Another commenter stated that FULs should only be based on the AMPs of products that satisfy the State availability standard.

Response: If a State can confirm that a covered outpatient drug is not a multiple source drug in the State, for a particular rebate period, the FUL will not apply to that drug in that State for that rebate period. Where the drug does not qualify as a multiple source drug in the State, the State should apply the appropriate pricing methodologies as set forth in the approved State plan. We have further clarified in our final rule that when at least two therapeutically, pharmaceutically, and bioequivalent drug products, covered under the Medicaid drug rebate program, are generally available within the State, the drug will be considered a multiple source drug. In the case where a covered outpatient drug is not a multiple source drug within the State, that drug would not be subject to the FUL in that State for the rebate period. The final comment regarding the calculation of the FUL based on certain products is outside of the scope of this rule.

Comment: One commenter stated that the rule notes that if a particular State could confirm that a drug is unavailable from two sources, the FUL will be lifted for the rebate period.

Response: In the case where a State can confirm that a covered outpatient drug is not a multiple source drug in the State, for a particular rebate period, the FUL will not apply to that drug in that State for that rebate period. Where the drug does not qualify as a multiple source drug in the State, the State should apply the appropriate pricing methodologies as set forth in the approved State plan.

Comment: One commenter requested further information on how the multiple source definition is to be applied in a rebate period, that is, quarterly, when

the FUL process will be on a monthly schedule.

Response: We appreciate the comment, but the definition of multiple source drug contemplates availability determinations on a rebate, as opposed to a monthly, period.

Comment: CMS has not always assigned FULs to every group of drug products, so one commenter assumed that CMS took this approach in recognition of the lack of product availability in one or more States. One commenter stated that it is apparent that CMS limited its conclusion about at least two equivalent products being available everywhere once a generic drug enters the market by adding the modifier ''nearly always.''

Response: Prior to the DRA revisions, we focused on applicability of the FULs based on the number of suppliers listed in a national published listing of average wholesale prices (such as Red Book, Blue Book, and Medi-Span). We have no reason not to believe that virtually all drug products are generally available in every State on a nationwide basis. However, we recognize there is a potential that certain drug products may not be generally available in every State and, as a result, we have established procedures which allow States to address such drug availability.

Comment: One commenter asserted that the States should be given an opportunity for an appeals process to address availability issues directly with CMS. They contend that this would support a more effective implementation of the new FUL pricing calculation by providing CMS with the ability to directly address unforeseen marketplace issues and ensure drug availability in each State across the nation.

Response: We do not believe that a formal appeals process will be needed. We continue to believe that the States are in the best position to determine drug availability and implement the process afforded in this rule when a covered outpatient drug has no equivalent that is generally available in the State. We have on going communication with the States, and through those discussions States may bring availability issues to our attention, or may bring availability issues to our attention in response to a pharmacy's complaint. We do not believe more formal appeals would be necessary as our source for setting FULs will be manufacturer submitted AMP data. Regardless, a State may disregard a FUL for a drug when it determines that the drug is not a multiple source drug within the State for the rebate period.

J. State Availability and Retail Pharmacy Definition

Comment: One commenter stated that CMS does not define ''retail pharmacies'' in the revised definition. However, CMS has included in the definition of the ''retail pharmacy class of trade'' many entities that do not constitute retail pharmacies. The commenter stated that determining that multiple source drug products are generally available in non-retail pharmacies would not be sufficient to satisfy the State availability standard.

Response: We appreciate the comment. However, the definition of retail pharmacies is outside the scope of this rulemaking.

K. Burden on States and Providers

Comment: Several commenters expressed concern about the burden that may be placed upon States and providers in determining whether a drug is a multiple source drug within the State.

Response: We believe that the effect on States and pharmacy providers will be small given our experience with the FUL program. To the extent a State would find, however, that a covered outpatient drug product is not a multiple source drug in that State, the effect will be to permit that State to disregard the FUL price for that drug, and apply appropriate pricing methodologies as set forth in the approved State plan.

Comment: One commenter expressed concern that there will be a substantial and ongoing burden on States because all retail pharmacies would have little choice but to notify the State that virtually any and every drug product may not be available as a multiple source drug in that State. Several commenters stated that a particular retail pharmacy will rarely if ever know whether a particular drug product is ''generally available to the public through retail pharmacies'' in a State. A commenter stated that, in practice, the most likely result would be that pharmacies would investigate only if they cannot buy enough inventory without losing more than they can afford. Another comment inquired how a State can confirm whether or not a multiple source drug is available from two sources.

Response: The statute provides that a drug product is considered to be sold or marketed in a State if the drug product appears in a published national listing of average wholesale prices, provided the listed product is ''generally available to the public through retail pharmacies in that State.'' In light of that standard, we see no reason why pharmacies would report that a substantial number of drugs would be generally unavailable; however, States have the authority to set reasonable standards for such reporting. We fully expect that pharmacies would report to their States information concerning any covered outpatient drug that is subject to a FUL but for which they cannot purchase an equivalent drug product.

Comment: One commenter stated that CMS is not only assigning States the burden of determining whether a multiple source drug is available in the marketplace (as listed in the Regulatory Impact Statement) but also of determining the adequacy of the FUL rates to cover pharmacy actual acquisition costs.

Response: We disagree. As we have previously indicated, we believe that the effect on States and pharmacy providers will be small. This rule does not require that States determine the adequacy of the FUL relative to the pharmacies' actual acquisition costs.

L. State Versus Federal Responsibility

Comment: CMS has given no guidance as to what the agency believes constitutes ''general availability to the public'' and what is considered by CMS to be a sufficient number of retail pharmacies that offer the drug product in sufficient quantities to be ''generally available to the public.''

Response: At this time we have not provided a definition of general availability to the public. The definition of multiple source drug has been in the statute since the amendments of the Omnibus Budget Reconciliation Act of 1990 and yet we have received very few complaints that drug products listed in the national compendia are not generally available, and the few complaints that we have received generally pertained to availability problems occurring nationwide, rather than availability problems unique to a particular State. We continue to believe that complaints regarding general availability will be infrequent and thus do not believe it is necessary to provide additional instructions to States at this time. However, if, after consultation with the States, we determine it is necessary to offer additional guidance, we will do so. We also note that the commenter has misconstrued this regulation which, in accordance with the statute, provides that the listed product be generally available to the public through retail pharmacies. General availability to the public is determined not by considering which drug products pharmacies have chosen to offer but by considering which drug

products are available for pharmacies to offer. We believe that if a drug is available to a retail pharmacy, then it will be available to the general public.

Comment: One commenter expressed concern that, if States cannot or will not act when pharmacies report a lack of availability of a drug, will CMS establish a process for pharmacies to directly petition CMS to remove a FUL? The commenter adds that CMS has not indicated that it will implement a timely process to remove the FUL on a product in a State.

Response: We have not established a separate Federal process for pharmacies to petition us for removal of a FUL and based on our experience with the FUL program, we see no need to add such a process at this time. We consider it the responsibility of the State to confirm the information provided by the pharmacies.

Comment: One commenter proposed that rather than having a process that has to be managed in 50 different States, it would be more efficient for CMS to establish a national process for States and providers to express their concerns.

Response: As discussed previously, we disagree. The statute and regulation provide that the listed product be generally available to the public through retail pharmacies in that State. We believe that States and pharmacies in those States are in a better position to assess the general availability of drugs in their areas.

M. Effects on Other Issues

Comment: We received an audit report entitled, Audit of Chain and Independent Pharmacies, Mass Merchandisers, Proprietary Stores and Foodstores with Pharmacies, March 2006, attached to a comment.

Response: We appreciate the report. However, the report did not address the provisions of this rule.

Comment: We received several comments regarding the definitions of AMP, wholesaler, and retail class of trade as well as comments regarding the outlier policy applied when setting FULs.

Response: The purpose of this rule is to define ''multiple source drug.'' The topics addressed by the commenters regarding AMP, wholesaler, retail class of trade, and outliers are not within the scope of this final rule.

Comment: One commenter stated that CMS must adopt a definition of ''multiple source drug'' that is based on the median or weighted AMP in order to ensure that such drug products are available to the public through retail pharmacies. One commenter urged CMS to clarify that when a drug product ceases to meet either the first or second prong of the ''multiple source drug'' definition (that is, there is not at least one other drug which is rated by the FDA as therapeutically equivalent in the most recent publication of the Approved Drug Products with Therapeutic Equivalence Evaluations and is pharmaceutically equivalent and bioequivalent as determined by FDA) that CMS will take Federal action to remove that drug from the FUL list and inform State Medicaid agencies to cease application of the FUL. Further, the commenter requested that CMS confirm that the State-by-State approach applies only in situations where the third prong of the ''multiple source drug'' definition is not satisfied—that is, where a generic equivalent is not ''sold or marketed in the State.''

Response: To the extent that a drug does not qualify as a multiple source drug, that drug is not subject to the FUL. Those comments concerning the revised definition of multiple source drug and the FUL methodology are not within the scope of the interim final rule with comment period.

Comment: One commenter asserted that updating AMPs and AMP based FULs monthly does not assure availability of drug products at the FUL rates, since corrections are not made to previously issued FULs. Another commenter stated that this proposed rule change does nothing to address fundamental shortcomings of using the currently proposed basis to set FULs.

Response: These comments are beyond the scope of this rulemaking document and will not be addressed in this rulemaking document.

IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the March 2008 interim final rule with comment period with two changes.

In § 447.205, paragraph (3)(i) of the definition of multiple source drug, the term ''covered outpatient drug'' is revised to read ''drug product,'' and ''listed product'' respectively to reflect the statutory language.

V. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

We are not preparing an analysis for the RFA because the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The only small entities that will potentially be affected by this final rule are small pharmacies. We believe that the effect will be small because we are unaware of any situation in which there are at least two FDA-approved, therapeutically, pharmaceutically, and bioequivalent drugs generally available in one State but not another State. To the extent a State would find, however, that a drug is not a multiple source drug in that State because no FDA-approved, therapeutically, pharmaceutically, and bioequivalent drug product is generally available in that State, the only effect will be to permit that State to disregard the FUL price for a drug that no longer qualifies as a multiple source drug in that State when determining the aggregate limit. To the extent this final rule has an effect on small retail pharmacies, that effect will be to increase payment rates to those pharmacies by allowing States to disregard FULs for certain drugs. Small pharmacies would only need to report when one drug in a two-drug group of therapeutically, pharmaceutically, and

bioequivalent drugs is unavailable. However, such reporting would clearly be in their interest. In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act, because the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Small rural hospitals would be affected only to the extent that no FDA-approved, therapeutically and bioequivalent drug is available in that State for a particular outpatient drug provided through their outpatient pharmacies. As discussed above for pharmacies, States may choose to change reimbursement for drugs that are not multiple source drugs within the State, but this change is expected to increase reimbursement.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending on State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year of $100 million in 1995, updated annually for inflation. In 2008, that threshold is approximately $130 million. This final rule does not contain any mandates that will impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $130 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This regulation will impose only a very small burden, if any, on States. When a pharmacy has notified a State that a drug on the CMS FUL list may not be available as a multiple source drug in that State, the State should determine whether the pharmacy's assertion of lack of general availability in the State is valid. The State, however, has no obligation to make an independent assessment of drug availability in the absence of such notification by a pharmacy. This final rule will only revise payment rates in those rare cases in which a particular FDA-approved therapeutically, pharmaceutically, and bioequivalent drug is not generally available to the public through retail pharmacies in a particular State and, as a result, only one therapeutically, and bioequivalent drug product is generally available to the public through those pharmacies. In this circumstance, a State would need to confirm the information received from its pharmacies regarding drug availability. This would impose only a small burden on States. State systems are designed to allow for payment changes as a routine matter and to change the composition of the FUL groups or delete FUL groups. Since this regulation does not impose any significant costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Sections in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, rural areas.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services, is confirming the interim rule published on March 14, 2008 (73 FR 13785) as final with the following changes:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 447.502 the definition of ''Multiple source drug'' is amended by revising paragraph (3)(i) to read as follows:

§ 447.502 Definitions.

* * * * *

Multiple source drug * * *

* * * * *

(3) * * *

(i) A drug product is considered sold or marketed in a State if it appears in a published national listing of average wholesale prices, selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 20, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 21, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–23653 Filed 10–6–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070817467–8554–02]

RIN 0648–XK82

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Limited Access General Category Scallop Fishery to Individual Fishing Quota Scallop Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Limited Access General Category (LAGC) Scallop Fishery will close to individual fishing quota (IFQ) scallop vessels until it re-opens on December 1, 2008, under current regulations. This action is based on the determination that the third quarter scallop total allowable catch (TAC) for LAGC IFQ scallop vessels (including vessels issued an IFQ letter of authorization (LOA) to fish under appeal), is projected to be landed. This action is being taken to prevent IFQ scallop vessels from exceeding the 2008 third quarter TAC, in accordance with the regulations implementing Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP), enacted by Framework 19 to the FMP, and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the LAGC fishery to all IFQ scallop vessels is effective 0001 hr local time, October 5, 2008, through November 30, 2008.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Fishery Management Specialist, (978) 281–9112, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in

the LAGC fishery are found at §§ 648.59 and 648.60. Regulations specifically governing IFQ scallop vessel operations in the LAGC fishery are specified at § 648.53(a)(8)(iii). These regulations authorize vessels issued a valid IFQ scallop permit to fish in the LAGC fishery under specific conditions, including a TAC. The TACs were established by the final rule that implemented Framework 19 to the FMP (73 FR 30790 May 29, 2008) and included a TAC of 623,747 lb (282,927 kg) that may be landed by IFQ vessels during the third quarter of the 2008 fishing year. The regulations at § 648.53(a)(8)(iii) require the LAGC fishery to be closed to IFQ vessels once the Northeast Regional Administrator has determined that the TAC is projected to be landed.

Based on dealer reporting and vessel pre-landing reports through Vessel Monitoring Systems (VMS), a projection concluded that, given current activity levels by IFQ scallop vessels in the area, 623,747 lb (282,927 kg) will have been landed on October 4, 2008. Therefore, in accordance with the regulations at § 648.53(a)(8)(iii), the LAGC scallop fishery is closed to all general IFQ vessels as of 0001 hr local time, October 5, 2008. IFQ scallop vessels are not allowed to fish for, possess, or retain scallops, or declare, or initiate, a scallop trip following this closure for the remainder of the 2008 third quarter, ending on November 30, 2008. This closure is in effect for the remainder of the third quarter of the 2008 scallop fishing year under current regulations. The LAGC scallop fishery is scheduled to re-open to IFQ scallop vessels on December 1, 2008.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes the LAGC scallop fishery to all IFQ scallop vessels until December 1, 2008, under current regulations. The regulations at § 648.53(a)(8)(iii) require such action to ensure that IFQ scallop vessels do not exceed the 2008 third quarter TAC. The LAGC scallop fishery opened for the third quarter of the 2008 fishing year at 0001 hours on September 1, 2008. Data indicating the IFQ scallop fleet has landed all of the 2008 third quarter TAC have only recently become available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. If implementation of this closure is delayed to solicit prior public comment, the quota for this quarter will be exceeded, thereby undermining the conservation objectives of the FMP. Also, if the magnitude of any overage is significant, it would warrant a decrease in the fourth quarter quota. This would have a negative economic impact on vessels that fish seasonally in that period. The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23708 Filed 10–2–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075–1217–02]

RIN 0648–XK42

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule, tilefish commercial quota adjustment.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that the quota for the tilefish Full-time Tier 2 permit category has been exceeded for fishing year (FY) 2008, requiring an adjustment of the Full-time Tier 2 permit category quota for FY 2009. This action complies with the Fishery Management Plan for the Tilefish Fishery (FMP) and is intended to continue the rebuilding program in the FMP by taking into account previous overages of the tilefish quota.

DATES: Effective November 1, 2008, through October 31, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy A. Cardiasmenos, Fishery Policy Analyst, (978) 281–9204.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 50 CFR 648.290(c) state that any overages of the quota for any tilefish limited access category that occur in a given fishing year will be subtracted from the quota for that category in the following fishing year. This same section also states that, if the tilefish harvest attributed to the open access Incidental permit category exceeds 5 percent of the total allowable landings (TAL) for a given fishing year, the trip limit for the Incidental category may be reduced the following year. In both of these instances, § 648.290(c) specifies that, if an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

The tilefish TAL for FY 2009 remains unchanged from previous years at 1.995 million lb (905 mt). The FMP dictates that the TAL be divided between the three limited access tilefish permit categories after the TAL is reduced by 5 percent to account for incidental tilefish landings (open-access Incidental permit category) as follows: Sixty-six percent (1,250,865 lb (567,383 kg)) to Full-time Tier 1; 15 percent (284,288 lb (128,951 kg)) to Full-time Tier 2; and 19 percent (360,098 lb (163,338 kg)) to Part-time vessels.

Based upon vessel reports and other information available, FY 2008 tilefish landings for limited access Full-time Tier 2 permit category were 291,620 lb (132,277 kg), resulting in an overage of 7,332 lb (3,326 kg). This overage amount is being deducted from the FY 2009 Full-time Tier 2 permit category quota through this action, which results in an adjusted quota of 276,956 lb (125,625 kg) for this category in FY 2009. Adjustments to the remaining permit categories are not needed at this time, and the FY 2009 quotas for these categories therefore, remain status quo, including the Incidental trip limit for tilefish for FY 2009, which will remain at its default value of 300 lb (136 kg). If final landings data for 2008 indicate that an adjustment of the quota for any of the other permit categories is necessary, a notification of the adjustment will be published in the **Federal Register**.

The FY 2009 tilefish Full-time Tier 2 permit category quota, the FY 2008 tilefish Full-time Tier 2 permit category landings, and the resulting overage of the FY 2008 tilefish Full-time Tier 2 permit category quota are presented in Table 1. The resulting adjusted FY 2009 tilefish Full-time Tier 2 permit category commercial quota is presented in Table 2.

TABLE 1. TILEFISH FULL-TIME TIER 2 CATEGORY 2008 LANDINGS AND OVERAGE

Permit Category	2008 Quota		2008 Landings		2008 Overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
Full-time Tier 2	284,288	128,951	291,620	132,277	7,332	3,326

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

TABLE 2. TILEFISH FULL-TIME TIER 2 CATEGORY ADJUSTED FY 2009 QUOTA

Permit Category	2009 Initial Quota		2009 Adjusted Quota	
	Lb	Kg[1]	Lb	Kg[1]
Full-time Tier 2	284,288	128,951	276,956	125,625

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment as notice and comment would be impracticable and unnecessary. The regulations under § 648.290(c) requires the Regional Administrator to subtract any overage of the quota for any tilefish limited access category from the quota for that category in the following fishing year. Accordingly, the action being taken by this temporary rule is nondiscretionary. There is no discretion to modify this action based on public comment at this time. The rate of harvest of tilefish by the Full-time permit category is updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action as a result of a tilefish quota being exceeded during FY 2008. Further, the potential for this action was considered and open to public comment during the development of the tilefish FMP. Therefore, any negative effect the waiving of public comment may have on the public is mitigated by these factors.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23720 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0809231252–81272–01]

RIN 0648–AX28

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; correcting amendment.

SUMMARY: NMFS announces correction to Federal regulations for the West Coast groundfish fishery. This action corrects trip limits for vessels using multiple bottom trawl gears, which were published in a final rule. That final rule announced inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. This correction is intended to eliminate any confusion for the public that may have occurred as a result of prior incorrect NMFS publications.

DATES: Effective 0001 hours (local time) October 7, 2008. Comments on this final rule must be received no later than 5 p.m., local time on November 6, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AX28 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Gretchen Arentzen.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail gretchen.arentzen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A

proposed rule to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery and Amendment 16–4 of the FMP was published on September 29, 2006 (71 FR 57764). The final rule to implement the 2007–2008 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 29, 2006 (71 FR 78638). These specifications and management measures are codified in the CFR (50 CFR part 660, subpart G). The final rule was subsequently amended on: March 20, 2007 (71 FR 13043); April 18, 2007 (72 FR 19390); July 5, 2007 (72 FR 36617); August 3, 2007 (72 FR 43193); September 18, 2007 (72 FR 53165); October 4, 2007 (72 FR 56664); December 4, 2007 (72 FR 68097); December 18, 2007 (72 FR 71583); April 18, 2008 (73 FR 21057); and July 24, 2008 (73 FR 43139).

The July 24, 2008 final rule implemented inseason adjustments to groundfish management measures to respond to updated fishery information and other inseason management needs, effective August 1, 2008 (73 FR 43139). This final rule, in part, adjusted trip limits in the limited entry non-whiting trawl fishery North of 40°10.00' N. lat. NMFS accepted public comments on this final rule through August 25, 2008. No comments were received regarding this final rule.

Multiple types of bottom trawl gear are used in this sector of the fishery, including large footrope and small footrope trawl gears. Trip limits for some species, presented in Table 3 (North) to part 660 subpart G, are gear-specific due to differences in selectivity. Providing differential trip limits based on gear selectivity is a management measure that is designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of depleted stocks by remaining within their rebuilding OYs.

In the northern bottom trawl fishery, which is structured around gear-specific cumulative trip limits, use of multiple gear types during a single trip has required the designation of cumulative trip limits on trips in which multiple types of gears are used or are on board the fishing vessel. This is useful for enforcement of cumulative trip limits, and catch accounting. Regulations that define cumulative trip limits, if more than one type of trawl gear is on board the vessel, are at 50 CFR 660.381 (c)(4)(i)(D). In these regulations, vessels with multiple trawl gears on board at any time during the cumulative limit period are subject to the smaller of the limits, for the gears on board, for that entire cumulative limit period. In addition to this text description in the regulations, Table 3 (North) provides the numerical value for the most restrictive gear-specific trip limits in a line titled ''multiple bottom trawl gears''. An additional description is provided in the 8th footnote to that table.

In the July 24, 2008 inseason final rule, gear specific trip limits for sablefish and Dover sole, taken by vessels using selective flatfish trawl gear, were raised from August 1 through the remainder of the year, consistent with the recommendation by the Council at its June 6–13, 2008, meeting in Foster City, California. For these species, gear-specific trip limits for vessels using selective flatfish trawl gear are the most restrictive. Therefore, the lines in Table 3 (North) describing the ''multiple bottom trawl gears'' trip limits for these species should be equal to the selective flatfish trawl limits over the entire year. The numerical value for ''multiple bottom trawl gears'', which should be equal to the cumulative limits for selective flatfish trawl gear, were not increased. An oversight created an inconsistency between the most restrictive gear-specific cumulative trip limits, which are repeated in lines 14 and 26 in Table 3 (North), and described in the table's 8th footnote and the regulations at § 660.381. This correction publishes Table 3 (North) with numerical values in the lines defining cumulative trip limits for vessels using ''multiple bottom trawl gears'' corrected to reflect the most restrictive gear-specific cumulative trip limits for sablefish and Dover sole, consistent with the table's 8th footnote, regulatory text at § 660.381(c)(4)(i)(D), and the Council's June recommendations for inseason modifications to cumulative trip limits.

Classification

The Assistant Administrator for Fisheries (AA), NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B); providing prior notice and opportunity for comment would be contrary to the public interest.

This correction document revises Table 3 (North) to part 660, subpart G of the Code of Federal Regulations so that the cumulative trip limits for vessels using ''multiple bottom trawl gears'', taking and retaining sablefish and Dover sole, are consistent with regulations at § 660.381(c)(4)(i)(D). Allowing inconsistencies caused by an oversight to remain in the **Federal Register** would be contrary to the public interest. It would leave language in the CFR that implies that trip limits for vessels using multiple trawl gear are unnecessarily lower than described in the regulatory text, and are unnecessarily lower than the most restrictive gear-specific cumulative trip limit shown in Table 3 (North). This correction is intended to allow increased harvest opportunities for healthy groundfish stocks, so that NMFS may meet its obligations under the Groundfish FMP to achieve, to the extent possible, the OYs of target species. Failing to meet this obligation as quickly as possible would be contrary to the public interest, as it would unnecessarily restrict cumulative trip limits for vessels using multiple bottom trawl gears. The use of cumulative trip limits for vessels using multiple bottom trawl gears were analyzed in the 2005–2006 groundfish specifications and management measures Environmental Impact Statement and clearly described in the preamble to the inseason final rule, implemented on April 1, 2005 (70 FR 16145, March 30, 2005). Prior notice and opportunity for comment was provided earlier because both the EIS and the final rule were made available for public comment, and no comments were received pertaining to the representation of ''multiple bottom trawl gear'' cumulative trip limits in Table 3 (North).

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based on the reasons provided above for waiver of prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 660

Fishing, Fisheries, and Indian Fisheries.

Dated: October 1, 2008.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Table 3 (North) to part 660 subpart G is revised to read as follows:

BILLING CODE 3510–22–S

Table 3 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply – Read § 660.301 - § 660.399 before using this table 081708

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10.00' N. lat.	shore - modified 200 fm [7/]	shore - 200 fm	shore - 150 fm			shore - modified 200 fm [7/]
2	48°10.00' N. lat. - 46°38.17' N. lat.	75 fm - modified 200 fm [7/]	60 fm - 200 fm	60 fm - 150 fm			75 fm - modified 200 fm [7/]
3	46°38.17' N. lat. - 46°16.00 N. lat.		60 fm - 200 fm		60 fm - 150 fm		
4	46°16.00 N. lat. - 45°46.00' N. lat.		75 fm - 200 fm	75 fm - 150 fm		75 fm - 200 fm	
5	45°46.00' N. lat. - 43°20.83' N. lat.		75 fm - 200 fm				
6	43°20.83' N. lat. - 42°40.50' N. lat.	shore - modified 200 fm [7/]	shore - 200fm				shore - modified 200 fm [7/]
7	42°40.50' N. lat. -40°10.00' N. lat.	75 fm - modified 200 fm [7/]	75 fm - 200 fm	60 fm - 200 fm			75 fm - modified 200 fm [7/]

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

8	**Minor slope rockfish[2/] & Darkblotched rockfish**	1,500 lb/ 2 months					
9	**Pacific ocean perch**	1,500 lb/ 2 months					
10	**DTS complex**						
11	Sablefish						
12	large & small footrope gear	14,000 lb/ 2 months		19,000 lb/ 2 months	24,000 lb/ 2 months		19,000 lb/ 2 months
13	selective flatfish trawl gear	5,000 lb/ 2 months			7,000 lb/ 2months		
14	multiple bottom trawl gear [8/]	5,000 lb/ 2 months			7,000 lb/ 2months		
15	Longspine thornyhead						
16	large & small footrope gear	25,000 lb/ 2 months					
17	selective flatfish trawl gear	3,000 lb/ 2 months					
18	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
19	Shortspine thornyhead						
20	large & small footrope gear	12,000 lb/ 2 months		25,000 lb/ 2 months			
21	selective flatfish trawl gear	3,000 lb/ 2 months					
22	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
23	Dover sole						
24	large & small footrope gear	80,000 lb/ 2 months					
25	selective flatfish trawl gear	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months	50,000 lb/ 2 months		
26	multiple bottom trawl gear [8/]	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months	50,000 lb/ 2 months		

TABLE 3 (North)

Table 3 (North). Continued

27	**Whiting**						
28	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
29	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
30	**Flatfish** (except Dover sole)						
31	Arrowtooth flounder						
32	large & small footrope gear	150,000 lb/ 2 months					
33	selective flatfish trawl gear	10,000 lb/ 2 months					
34	multiple bottom trawl gear [8/]	10,000 lb/ 2 months					
35	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
36	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole.			110,000 lb/ 2 months
37	large & small footrope gear for Petrale sole	40,000 lb/ 2 months					30,000 lb/ 2 months
38	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
39	selective flatfish trawl gear for Petrale sole						
40	multiple bottom trawl gear [8/]	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
41	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
42	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
43	large & small footrope gear	300 lb/ 2 months					
44	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
45	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

TABLE 3 (North) con't

46	**Canary rockfish**				
47	large & small footrope gear	CLOSED			
48	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
49	multiple bottom trawl gear [8/]	CLOSED			
50	**Yellowtail**				
51	midwater trawl	Before the primary whiting season: CLOSED. – During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. – After the primary whiting season: CLOSED.			
52	large & small footrope gear	300 lb/ 2 months			
53	selective flatfish trawl gear	2,000 lb/ 2 months			
54	multiple bottom trawl gear [8/]	300 lb/ 2 months			
55	**Minor nearshore rockfish & Black rockfish**				
56	large & small footrope gear	CLOSED			
57	selective flatfish trawl gear	300 lb/ month			
58	multiple bottom trawl gear [8/]	CLOSED			
59	**Lingcod**[4/]				
60	large & small footrope gear	1,200 lb/ 2 months	4,000 lb/ 2 months		
61	selective flatfish trawl gear		1,200 lb/2 months		
62	multiple bottom trawl gear [8/]				
63	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
64	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
65	**Other Fish** [5/]	Not limited			

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. E8–23722 Filed 10–6–08; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XK96

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Subject to Amendment 80 Sideboard Limits in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 Pacific cod sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 2008, until 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 679.

The 2008 Pacific cod sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA is 389 metric tons (mt), as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(v)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 Pacific cod sideboard limit established for Amendment 80 vessels

subject to sideboard limits in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 330 mt in the Western Regulatory Area of the GOA. The remaining 59 mt in the Western Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(v)(C), the Regional Administrator finds that this Amendment 80 sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 30, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2008.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23589 Filed 10–1–08; 4:30 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XK97

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by non–American Fisheries Act (AFA) crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 Pacific cod sideboard limit established for non–AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 3, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2008 Pacific cod sideboard limit established for non–AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 1,579 metric tons (mt) for the GOA, as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 680.22(e)(2)(i), the Regional Administrator has determined that the 2008 Pacific cod sideboard limit established for non–AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance of 1,569 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non–AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod for non–AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23709 Filed 10–2–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 195
Tuesday, October 7, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL71

Prevailing Rate Systems; Redefinition of the Buffalo, NY, and Pittsburgh, PA, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing a proposed rule that would redefine the geographic boundaries of the Buffalo, NY, and Pittsburgh, PA, appropriated fund Federal Wage System (FWS) wage areas. The proposed rule would redefine McKean and Warren Counties, PA, and the Allegheny National Forest portions of Elk and Forest Counties, PA, from the Pittsburgh wage area to the Buffalo wage area. These changes are based on a recent consensus recommendation of the Federal Prevailing Rate Advisory Committee to best match the counties proposed for redefinition to a nearby FWS survey area. No other changes are proposed for the Buffalo or Pittsburgh FWS wage areas.

DATES: We must receive comments on or before November 6, 2008.

ADDRESSES: Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is proposing to redefine the Buffalo, NY, and Pittsburgh, PA, appropriated fund Federal Wage System (FWS) wage areas. This proposed rule would redefine McKean and Warren Counties, PA, and the Allegheny National Forest portions of Elk and Forest Counties, PA, from the Pittsburgh wage area to the Buffalo wage area.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Elk, Forest, McKean, and Warren Counties are currently area of application counties in the Pittsburgh FWS wage area. Located in the northwestern section of the State of Pennsylvania, Elk, Forest, McKean, and Warren Counties include portions of the Allegheny National Forest.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that McKean and Warren Counties would be more appropriately defined as part of the Buffalo area of application. The distance criterion is the major factor in our determination. McKean and Warren Counties are closer to the Buffalo survey area than to the Pittsburgh survey area. McKean County is approximately 157 km (98 miles) from Buffalo and 277 km (172 miles) from Pittsburgh. Warren County is approximately 153 km (95 miles) from Buffalo and 257 km (160 miles) from Pittsburgh. We reviewed the other criteria, but they did not favor one wage area more than another.

Analysis of OPM's regulatory criteria for Elk and Forest Counties does not show a clear indication that Elk and Forest Counties should be placed in a different FWS wage area. However, the southern part of the Allegheny National Forest is located in portions of Elk and Forest Counties. Since part of the Forest would therefore fall within the boundaries of two separate wage areas, we also propose that the Allegheny National Forest portions of Elk and Forest Counties be redefined to the Buffalo area of application. This would continue to place the Allegheny National Forest in a single wage area and would provide equal pay treatment for FWS employees with employment locations in the Forest. The remaining portion of Elk and Forest Counties would continue to be part of the Pittsburgh wage area. We believe the mixed nature of our regulatory analysis findings indicates that the remaining employment locations in Elk and Forest Counties remain appropriately defined to the Pittsburgh wage area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. FPRAC recommended no other changes in the geographic definitions of the Buffalo and Pittsburgh wage areas. The affected employees in Elk, Forest, McKean, and Warren Counties would be placed on the wage schedule for the Buffalo wage area on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Michael W. Hager,

Acting Director.

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of New York is amended by revising the listing for Buffalo; and for the State of Pennsylvania, by revising the listing for Pittsburgh, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

NEW YORK

* * * * *

Buffalo

Survey Area

New York:
Erie
Niagara

Area of Application. Survey area plus:

New York:
Cattaraugus
Chautauqua
Pennsylvania:
Elk (Only includes the Allegheny National Forest portion)
Forest (Only includes the Allegheny National Forest portion)
McKean
Warren

* * * * *

PENNSYLVANIA

* * * * *

Pittsburgh

Survey Area

Pennsylvania:
Allegheny
Beaver
Butler
Washington
Westmoreland

Area of Application. Survey area plus:

Pennsylvania:
Armstrong
Bedford
Blair
Cambria
Cameron
Centre
Clarion
Clearfield
Clinton
Crawford
Elk (Does not include the Allegheny National Forest portion)
Erie
Fayette
Forest (Does not include the Allegheny National Forest portion)
Greene
Huntingdon
Indiana
Jefferson
Lawrence
Mercer
Potter
Somerset
Venango
Ohio:
Belmont
Carroll
Harrison
Jefferson
Tuscarawas
West Virginia:
Brooke
Hancock
Marshall
Ohio

* * * * *

[FR Doc. E8–23725 Filed 10–6–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1005; Directorate Identifier 2008–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It was found one occurrence of a fuel booster pump circuit br[e]aker opening during an engine maintenance servicing. An inspection inside the fuel tank revealed the fuel booster pump[']s electrical harness chafing against its body, causing the loss of the electrical wiring protection and resulting in a short circuit. Further in-tank inspections have showed other fuel booster pump electrical harnesses chafing either with the pump body and/or with adjacent fuel lines, causing damage to the harness protective layers and resulting * * * [in a] possible ignition source inside the fuel tank.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 6, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1005; Directorate Identifier 2008–NM–119–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2008–05–01, effective June 13, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It was found one occurrence of a fuel booster pump circuit br[e]aker opening during an engine maintenance servicing. An inspection inside the fuel tank revealed the fuel booster pump[']s electrical harness

chafing against its body, causing the loss of the electrical wiring protection and resulting in a short circuit. Further in-tank inspections have showed other fuel booster pump electrical harnesses chafing either with the pump body and/or with adjacent fuel lines, causing damage to the harness protective layers and resulting * * * [in a] possible ignition source inside the fuel tank.

* * * * *

The corrective actions include revising the Limitations section of the airplane flight manual to include a minimum fuel quantity, adding a minimum fuel quantity limitation for operation of the fuel booster pump, inspecting the fuel booster pump electrical harness of the left- and right-hand fuel tanks for damage, replacing any fuel booster pump having a damaged electrical harness, installing clamps on the tank structure, and installing tie down straps for the fuel booster pump electrical harness. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletin 120–28–0016, dated January 9, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 110 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $269 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $99,990, or $909 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–1005; Directorate Identifier 2008–NM–119–AD.

Comments Due Date

(a) We must receive comments by November 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category, serial numbers 120001 to 120359.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''It was found one occurrence of a fuel booster pump circuit br[e]aker opening during an engine maintenance servicing. An inspection inside the fuel tank revealed the fuel booster pump[']s electrical harness chafing against its body, causing the loss of the electrical wiring protection and resulting in a short circuit. Further in-tank inspections have showed other fuel booster pump electrical harnesses chafing either with the pump body and/or with adjacent fuel lines, causing damage to the harness protective layers and resulting * * * [in a] possible ignition source inside the fuel tank.''

* * * * *

The corrective actions include revising the Limitations section of the airplane flight manual (AFM) to include a minimum fuel

quantity, adding a minimum fuel quantity limitation for operation of the fuel booster pump, inspecting the fuel booster pump electrical harness of the left- and right-hand fuel tanks for damage, replacing any fuel booster pump having a damaged electrical harness, installing clamps on the tank structure, and installing tie down straps for the fuel booster pump electrical harness.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD, insert in the Limitations section of the AFM a copy of this AD or the following statement:

''The minimum fuel quantity inside each tank must be 300 kg (662 pounds) or 370 liters (97.75 gallons).''

(2) As of the effective date of this AD, any fuel tank defueling or other maintenance action which demands use of the fuel booster pumps is limited to a minimum fuel quantity of no less than 300 kilograms (662 pounds) or 370 liters (97.75 gallons) inside the respective tank.

(3) Within 4,000 flight hours, or 24 months, or at the next scheduled or unscheduled fuel tank opening after the effective date of this AD, whichever occurs first, do the following actions:

(i) Inspect the fuel booster pump electrical harness of the left- and right-hand fuel tanks for damage on its external protection, in accordance with paragraph 3.F. (Part I) of the Accomplishment Instructions of EMBRAER Service Bulletin 120–28–0016, dated January 9, 2008. If any damaged fuel booster pump electrical harness is found, before further flight, replace the affected fuel booster pump with another fuel booster pump bearing the same part number, in accordance with EMBRAER Service Bulletin 120–28–0016, dated January 9, 2008.

(ii) Install clamps and tie down straps on the tank structure and attach each fuel booster pump electrical harness to the left- and right-hand fuel tanks to avoid eventual chafing against the pump body, adjacent fuel lines, structure or any other part, and to prevent damage to the harness protective layers, in accordance with paragraph 3.G. (Part II) of the Accomplishment Instructions of EMBRAER Service Bulletin 120–28–0016, dated January 9, 2008.

(4) After complying with the actions in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD, the limitations imposed by paragraphs (f)(1) and (f)(2) of this AD are no longer required, and the AFM revision required by paragraph (f)(1) of this AD may be removed from the AFM.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2008–05–01, effective June 13, 2008; and EMBRAER Service Bulletin 120–28–0016, dated January 9, 2008; for related information.

Issued in Renton, Washington, on September 29, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–23666 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1065; Directorate Identifier 2008–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 727 airplanes. This proposed AD would require, among other actions, installing new ground fault interrupter (GFI) relays for the main fuel tanks and the auxiliary fuel tank pumps. This proposed AD also would require revising the FAA-approved maintenance program to incorporate new Airworthiness Limitations (AWLs) for the GFI of the boost pumps and for the uncommanded on system for the auxiliary fuel tank pumps. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent an electrical fault in the fuel pump system, which might cause a connector or end cap to burn through and a subsequent fire or explosion inside the fuel pump or wing spar area. We are also proposing this AD to prevent uncommanded operation of the auxiliary fuel tank pumps, which can cause them to run dry. This condition will increase pump temperature and could supply an ignition source to fumes in the fuel tank, which can result in a consequent fire or explosion.

DATES: We must receive comments on this proposed AD by November 21, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1065; Directorate Identifier 2008–NM–126–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have determined that the fuel pump control system on certain Model 727 airplanes must be changed by installing ground fault interrupter (GFI) relays that will interrupt the electrical power to the fuel pumps when a ground fault is detected. The GFI relays will remove the 115VAC power from the fuel pumps before electrical arcing can occur. An electrical fault in the fuel pump system, if not corrected, might cause a connector or end cap to burn through and a subsequent fire or explosion inside the fuel pump or wing spar area.

In addition, we have determined that electrical faults within the fuel tank pump system on certain Model 727–100 and –200 series airplanes can cause a pump to operate when the pump switch is in the ''OFF'' position (referred to as ''uncommanded on'' (UCO) pump operation). Uncommanded operation of the auxiliary fuel tank pumps can cause them to run dry, which will increase pump temperature and could supply an ignition source to fumes in the fuel tank, and result in a consequent fire or explosion.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 727–28A0128, dated April 4, 2008. The service bulletin describes procedures for installing new GFI relays for the main fuel tanks and the auxiliary fuel tank pumps and doing other specified actions. The other specified actions include installing new wires and modifying some existing wires to support the installation of the new GFI relays.

We also have reviewed Boeing Alert Service Bulletin 727–28A0130, dated April 30, 2008. The service bulletin describes procedures for:

- Installing new ground blocks, track, switch mounting bracket, relay mounting bracket, toggle switches, and relays, and making changes to the wire bundles in the GFI relay panel in the electronic equipment bay; and
- Installing new circuit breakers and lights and making changes to wire bundles on the third crewman's P6 and P4 panels in the flight compartment.

For certain airplanes identified in Boeing Alert Service Bulletin 727–28A0128, the procedures specified in Boeing Alert Service Bulletin 727–28A0130 must be done concurrently with the procedures specified in Boeing Alert Service Bulletin 727–28A0128.

In addition, we have reviewed ''Boeing 727–100/200 Airworthiness Limitations (AWLs),'' D6–8766–AWL, Revision August 2007 (hereafter referred to as ''Document D6–8766–AWL''). Document D6–8766–AWL describes, among other actions, new AWLs for the GFI of the boost pumps (i.e., 28–AWL–16) and for the Auxiliary Tanks Boost Pump Uncommanded On System (i.e., 28–AWL–17).

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require the following actions:

- Installing new GFI relays for the main fuel tanks and the auxiliary fuel tank pumps.
- For certain airplanes, installing new ground blocks, track, switch mounting bracket, relay mounting bracket, toggle switches, and relays, and changing the wire bundles in the GFI relay panel in the electronic equipment bay.
- For certain airplanes, installing new circuit breakers and lights and changing wire bundles on the third crewman's P6 and P4 panels in the flight compartment.
- Revising the FAA-approved maintenance program to incorporate AWL numbers 28–AWL–16 and 28–AWL–17, which would require repetitive inspections of the GFI of the boost pumps and of the uncommanded on system for the auxiliary fuel tank pumps, respectively.

Costs of Compliance

We estimate that this proposed AD would affect 199 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour (dollars)	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation of new GFI relays.	Between 202 and 416 [1].	$80	Between $30,619 and $59,785 [1].	Between $46,779 and $93,065 [1].	199	Between $9,309,021 and $18,519,935 [1].
Concurrent Requirements.	Between 68 and 209 [1].	80	Between $1,292 and $10,470 [1].	Between $6,732 and $27,190 [1].	35	Between $235,620 and $951,650 [1].
Revision of FAA-approved maintenance program.	1	80	None	$80	199	$15,920.

[1] Depending on the airplane configuration.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Boeing: Docket No. FAA–2008–1065; Directorate Identifier 2008–NM–126–AD.

Comments Due Date

(a) We must receive comments by November 21, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 727–28A0128, dated April 4, 2008.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an electrical fault in the fuel pump system, which might cause a connector or end cap to burn through and a subsequent fire or explosion inside the fuel pump or wing spar area. We are also issuing this AD to prevent uncommanded operation of the auxiliary fuel tank pumps, which can cause them to run dry. This condition will increase pump temperature and could supply an ignition source to fumes in the fuel tank, which can result in a consequent fire or explosion.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Installation

(f) Within 60 months after the effective date of this AD, install new ground fault interrupter (GFI) relays for the main fuel tanks and the auxiliary fuel tank pumps and do all the other specified actions by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0128, dated April 4, 2008.

Concurrent Requirements

(g) For airplanes identified as Groups 5 through 18 inclusive, in Boeing Alert Service Bulletin 727–28A0128, dated April 4, 2008: Concurrently with the installation required by paragraph (f) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0130, dated April 30, 2008.

(1) Install new ground blocks, track, switch mounting bracket, relay mounting bracket, toggle switches, and relays, and make changes to the wire bundles in the GFI relay panel in the electronic equipment bay.

(2) Install new circuit breakers and lights and make changes to wire bundles on the third crewman's P6 and P4 panels in the flight compartment.

Maintenance Program Revision

(h) Concurrently with accomplishing the installation required by paragraph (f) of this AD, revise the FAA-approved maintenance program by incorporating AWLs numbers 28–AWL–16 and 28–AWL–17 of Section D of

the ''Boeing 727–100/200 Airworthiness Limitations (AWLs),'' D6–8766–AWL, Revision August 2007 (hereafter referred to as ''Document D6–8766–AWL.'')

No Alternative Inspection or Inspection Intervals

(i) After accomplishing the action required by paragraph (h) of this AD, no alternative inspections or inspection intervals may be used, unless the inspections or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on September 18, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–23668 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0960; Airspace Docket No. 08–ASW–17]

Proposed Establishment of Class D and Class E Airspace; Conroe, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace and Class E Surface Area airspace at Lone Star Executive Airport, Conroe, TX. The establishment of an air traffic control tower has made these actions necessary for the safety of Instrument Flight Rule (IFR) operations at Lone Star Executive Airport. Class D airspace will revert to a Class E2 Surface Area during periods when the control tower is not operating.

DATES: Comments must be received on or before November 21, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0960/Airspace Docket No. 08–ASW–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Area, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 222–5582.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0960/Airspace Docket No. 08–ASW–17.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing a Class D airspace area and Class E Surface Area for IFR operations at Lone Star Executive Airport, Conroe, TX. The Class D airspace will revert to a Class E Surface Area during those periods when the control tower is not operating. These areas would be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

Class E Surface Areas are published in Paragraph 6002 of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E Surface Area designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code.

Subtitle 1, Section 106 describes the authority of the FAA Administrator Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Lone Star Executive Airport, Conroe, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Conroe, TX (New)

Lone Star Executive Airport, TX
(Lat. 30°21′09″ N., long. 95°24′52″ W.)
Humble VORTAC
(Lat. 29°57′25″ N., long. 95°20′45″ W.)
Navasota VORTAC
(Lat. 30°17′19″ N., long. 96°03′30″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.1-mile radius of Lone Star Executive Airport, excluding that airspace within the 4.1-mile radius north and east of the intersection of the IAH 352° radial and the TNV 075° radial. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASW TX E2 Conroe, TX (New)

Lone Star Executive Airport, TX
(Lat. 30°21′09″ N., long. 95°24′52″ W.)
Humble VORTAC
(Lat. 29°57′25″ N., long. 95°20′45″ W.)
Navasota VORTAC
(Lat. 30°17′19″ N., long. 96°03′30″ W.)

Within a 4.1-mile radius of Lone Star Executive Airport, excluding that airspace within the 4.1-mile radius north and east of the intersection of the IAH 352° radial and the TNV 075° radial. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on September 25, 2008.

Donald R. Smith,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E8–23753 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0985; Airspace Docket No. 08–ASW–18]

Proposed Establishment of Class E Airspace; Edinburg, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at South Texas International Airport, Edinburg, TX. Controlled airspace is necessary to accommodate Standard Instrument Approach Procedures (SIAP) at South Texas International Airport, Edinburg, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at South Texas International Airport.

DATES: Comments must be received on or before November 21, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0985/Airspace Docket No. 08–ASW–18, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 222–5582.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0985/Airspace Docket No. 08–ASW–18.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No.

11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace for SIAP IFR operations at South Texas International Airport, Edinburg, TX. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at South Texas International Airport, Edinburg, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700′ or more above the surface of the earth.

* * * * *

ASW TX E5 Edinburg, TX [New]

South Texas International Airport, TX
(Lat. 26°26′30″ N., long. 98°07′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of South Texas International Airport.

* * * * *

Issued in Fort Worth, TX on September 26, 2008.

Donald R. Smith,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E8–23768 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143453–05]

RIN 1545–BE96

Capital Costs Incurred To Comply With EPA Sulfur Regulations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed rulemaking by cross-reference to temporary regulations under section 179B of the Internal Revenue Code (Code) relating to the deduction of qualified capital costs paid or incurred by a small business refiner to comply with the highway diesel fuel sulfur control requirements of the Environmental Protection Agency.

DATES: The public hearing, originally scheduled for October 28, 2008 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–3628 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing that appeared in the **Federal Register** on Friday, June 27, 2008 (73 FR 36475) announced that a public hearing was scheduled for October 28, 2008, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 179B of the Internal Revenue Code.

The public comment period for these regulations expired on September 25, 2008. Outlines of topics to be discussed at the hearing were due on September 22, 2008. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Tuesday, September 30, 2008, no one has requested to speak. Therefore, the public hearing scheduled for October 28, 2008, is cancelled.

Guy Traynor,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–23656 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128841–07]

RIN 1545–BG91

Public Approval Guidance for Tax-Exempt Bonds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–128841–07) that was published in the **Federal Register** on Tuesday, September 9, 2008 (73 FR 52220) relating to the public approval requirements under section 147(f) of the Internal Revenue Code applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations affect State and local governmental issuers of tax-exempt private activity bonds.

FOR FURTHER INFORMATION CONTACT: David White, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 147 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–128841–07) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–128841–07), which was the subject of FR Doc. E8–20771, is corrected as follows:

§ 1.147(f)–1 [Corrected]

On page 52225, column 1, § 1.147(f)–1(b)(6)(ii)(A), line 4, the language ''and public approval stated would to be'' is corrected to read ''and public approval stated would be''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–23651 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0525; FRL–8726–3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets and Revised 2002 Emissions Inventory; Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements of the Clean Air Act (CAA) for the Dallas/Fort Worth (DFW) moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the RFP motor vehicle emissions budgets (MVEBs) and a revised 2002 Base Year Emission Inventory associated with the revision. EPA is proposing to approve the SIP revision because it satisfies the RFP, RFP transportation conformity, and Emissions Inventory requirements for 1997 8-hour ozone nonattainment areas classified as moderate, and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before November 6, 2008.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: September 26, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–23674 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[GSAR Case 2006–G515; Docket 2008–0007; Sequence 22]

RIN 3090–AI75

General Services Acquisition Regulation; GSAR Case 2006–G515; Rewrite of Part 532, Contract Financing

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise and update the agency's implementation of Federal Acquisition Regulation (FAR) contract financing policies. GSA has taken this opportunity to implement coverage for incremental funding of fixed-price, time-and-materials, and labor-hour contracts.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before November 6, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2006–G515 by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2006–G515'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2006–G515. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2006–G515'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2006–G515 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy at (202) 208–6925, or by e-mail at *meredith.murphy@gsa.gov*. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2006–G515.

SUPPLEMENTARY INFORMATION:

A. Background

This is part of the GSAM Rewrite Project, which was initiated in 2006 to revise, update, and simplify the GSAM. An Advance Notice of Proposed Rulemaking (ANPR), with a request for comments, was published February 15, 2006. Three comments on Part 532 were received in response and are discussed below. Prior to publication of this proposed rule, the draft coverage was circulated within GSA to the Services and regions. A total of 114 comments were received from 17 commenters. This proposed rule incorporates those recommendations where appropriate. The current GSAM Part 532 implements nine of the FAR Part 32 subparts and includes three supplementary subparts and 17 clauses. The proposed rule contains seven FAR Part 32 implementing subparts and two supplementary subparts, retains four clauses, and creates two new clauses. Of the 13 clauses that are omitted from Part 532, eight were moved to other parts of the GSAM (five to Part 538, two to Part 570, and one to Part 512), one was converted to FAR coverage, and four were cancelled.

In Subpart 532.1, Non-Commercial Item Purchase Financing, two of the three clauses prescribed were cancelled as redundant to the FAR and/or Standard Form 26. The clause at 552.232–72 was renamed ''Final Payment Under Building Services Contracts'' and the prescription was relocated to 532.904, ''Determining payment due dates.'' There is no FAR clause covering final payment for service contracts. The GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, was made mandatory at the request of the Office of General Counsel and Office of Inspector General, and the form's prescription was moved to Subpart 532.1. The certification language in the GSA form was modified to match the current required certification language in the clause at FAR 52.232–5(c).

The four clauses prescribed in Subpart 532.2 are for Schedules only, so Subpart 532.2 and clauses 552.232–8, 552.232–81, 552.232–82, and 552.232–83 were deleted in their entirety.

Subpart 532.7, Contract Funding, has been substantially revised to authorize the use of incremental funding for fixed-price, time-and-materials, and labor-hour contracts and provide a contract clause, 552.232–7007, Limitation of Government's Obligation. The FAR provides clauses for incremental funding of cost-type contracts, but not for the above contract types—although the use of incremental funding for such contracts is not prohibited by the FAR. The clause at 552.232–73, Availability of Funds, was cancelled because the use of such contingency-type clauses is inappropriate in circumstances other than those authorized by the FAR.

Subpart 532.8 included procedures for the contracting officer to follow when an assignment of claims was received under FAR 52.232–23, Assignment of Claims. It also included the prescription for GSAR 552.232–23, Assignment of Claims. The clause was used only for requirements or indefinite quantity contracts under which more than one agency could place orders. In such cases, the GSAR clause is required to be substituted for paragraph (a) of the FAR clause at 52.232–23, thus limiting the assignment of claims capability to an individual order, rather than to the contract as a whole. The GSAR prescription and clause at 552.232–23 provided an important protection for GSA, and one that should be available to other Government agencies that award contracts used by more than one agency and for the various Government agencies that issue orders under such contracts. Therefore, the clause is removed from the GSAR and has been proposed for inclusion in the FAR as Alternate 1 to FAR 52.232–23.

In Subpart 532.9, the definition of ''full cycle electronic commerce'' was deleted because the term is not used in the GSAM text. It is used in paragraph (a)(2) of the GSAR clause at 552.232–25 where the associated requirements are fully described. GSA has an approved deviation to use GSAR 552.232–25, Prompt Payment, in lieu of FAR 52.232–25, Prompt Payment. The effect of this is to waive Prompt Payment Act requirements for certain situations and types of contracts to allow GSA to pay its contractors more quickly than would be the case under the Prompt Payment Act. A related clause, GSAM 552.232–74, Invoice Payments, is used only in accordance with the FAR deviation to reduce payment times for commercial items when EFT is used (per FAR 52.232–33 instructions). Because this is the only difference from normal payment terms, the team determined that it was not necessary to have a separate clause that repeated much of other clauses. For this reason, 552.232–74 was converted to Alternate II of GSAR 552.212.4, prescribed at 532.908(c)(2).

The FAR does not cover contracting for leasehold interests, while the GSAM has a separate part, Part 570, devoted to the subject. Two clauses, GSAM 552.232–75 and 552.232–76, and their associated clause prescriptions, have been transferred to the Part 570 Review Team because they apply only to contracts for leasehold interests.

GSAR clause 552.232–78, Payment Information, has no FAR equivalent. All this GSAM clause does is direct contractors to a GSA-unique site which they can use to monitor the status of their payments. It is not necessary to use a clause to inform contractors of this web site. The web site can be included in section G, Contract Administration Data, in the body of the contract itself. This is the appropriate location for information relating to contract financing payments. The GSAR clause is therefore deleted.

In Subpart 532.70, Authorizing Payment of Governmentwide Commercial Purchase Card, the definition of ''Governmentwide commercial purchase card'' was deleted because it merely refers to the FAR definition. Section 532.7002, which contains the solicitation requirements for use of the purchase card, and section

532.7003, which prescribes the use of the contract clause entitled Payment By Governmentwide Commercial Purchase Card, have been renumbered and edited, as has the clause at 552.232–77. Personnel in the Office of the Chief Financial Officer (OCFO) provided counsel on updated terminology and recommended deletion of references to ''the credit card clearing house.''

Subpart 532.71 defines ''fixed-roll payments'' and the circumstances in which they may be used. Since the implementation of Pegasys, GSA no longer uses the fixed-roll payment process; therefore, GSA has deleted Subpart 532.71 in its entirety, as well as the related clause, 552.232–71, Adjusting Payments.

Only minor edits were made to Subpart 532.72, Payments Under Contracts Subject to Audit.

Three public comments on Part 532 were received in response to the Advance Notice of Public Rulemaking.

Comment: Two commenters stated that mandatory acceptance of Governmentwide credit cards (see GSAR 532.7003, 552.232–79, and clause 552.232–77) below the micro purchase threshold was inconsistent with the commercial practices for some Schedule contractors and should be made voluntary.

Response: The Governmentwide charge card is a critical element in the Government's electronic funds transfer system. FAR Part 13 directs Government agencies to use the Governmentwide credit card for purchases under the micropurchase threshold. Over the micropurchase threshold, contractors may, or may not, accept the card. Although GSA has changed portions of these clauses, the commenter's suggestion was not accepted.

Comment: One commenter requested that advanced payments be permitted for commercial items in the schedule program, stating ''(t)here is no statutory or regulatory prohibition from application of advanced payments to the MAS schedules.'' The Federal Acquisition Streamlining Act (FASA), Section 41.255(f), permitted advanced payment for commercial items at the discretion of the contracting officer when a series of conditions have been met. These conditions are delineated in FAR 32.202–1(b).

Response: The advance payments permitted by FAR 32.202 are a maximum of 15 percent of the contract price. The GSAR does not prohibit the types of advance payments authorized by FAR Subpart 32.2. Advance payments for services remain a violation of GAO guidelines. No change was made.

Comment: One commenter recommended that the GSAR be revised to clarify that subcontractor labor hours under a T&M contract are paid at the rates established in the prime contract or task order.

Response: This is not a GSA issue, but rather an issue for the FAR. There is no reason for GSA to have separate or different coverage than other Government agencies for this subject. No change was made to the GSAM as a result of this comment.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because a number of contract clauses and requirements are being eliminated from the current regulation. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 532 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2006–G515), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0102.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Dated: September 25, 2008.

Al Matera,

Director, Office of Acquisition Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 532 and 552 as set forth below:

PART 532—CONTRACT FINANCING

1. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Revise section 532.111 to read as follows:

532.111 Contract clauses for non-commercial purchases.

For contracts that include the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, the contracting officer shall provide the contractor with GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, to be used to make the certification required by FAR 52.232–5(c).

Subpart 532.2—[Removed]

3. Remove Subpart 532.2.

4. Revise section 532.705–1 to read as follows:

532.705–1 Clauses for contracting in advance of funds.

(a) In most circumstances, contracting officers should be able to use either—

(1) FAR 52.232–18, Availability of Funds (i.e., for any contract type when the funds will not be appropriated until the next fiscal year); or

(2) FAR 52.232–19, Availability of Funds for the Next Fiscal Year (i.e., for a one-year ID/IQ or requirements contract for services).

(b) Contracting officers may only use 552.232–73, Availability of Funds, when all of the following conditions apply:

(1) The acquisition is for severable services.

(2) The contract, or a portion of the contract, will be chargeable to funds of the new fiscal year.

(3) The circumstances described in the prescriptions for FAR 52.232–18 or 52.232–19 do not apply.

(c) Contracting officers may use the clause at 552.232–7007, Limitation of Government's Obligation, or its Alternate I, in clauses that are incrementally funded.

Subpart 532.8—[Removed]

5. Remove subpart 532.8.

532.902 [Removed]

6. Remove section 532.902.

7. Add section 532.904 to read as follows:

532.904 Determining payment due dates.

Payment due dates for construction contracts are addressed at FAR 32.904(d). The following procedures apply to construction and building service contracts:

(a) The final payment on construction or building service contracts shall not be processed until the contractor submits a properly executed GSA Form 1142,

Release of Claims. If, after repeated attempts, a release of claims cannot be obtained from the contractor, the contracting officer may process the final payment with the approval of assigned legal counsel.

(b) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amounts withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

(5) The agreed-upon dollar amount in a Deficiency Report, which is included in all applicable Operation and Maintenance (O&M) service contracts.

(c) When the contract is for the performance of building services, the contracting officer shall include the clause at 552.232–72, Final Payment Under Building Services Contracts.

8. Revise section 532.905 to read as follows:

532.905 Payment documentation and process.

For contracts of the type shown in 532.7201(a)(1) through (4)—

(a) Contractors are to submit invoices or vouchers concurrently to the Office of the Chief Financial Officer and to the contracting officer for approval. Invoices must be annotated with the date of receipt, as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The contracting officer or designee must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer must make the required deduction, except as provided in 532.7203. Subject to 532.7201, the contracting officer must note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor and forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

(b) See GSAM 532.7203 for the handling of audit findings.

532.905–70 and 532.905–71 [Removed]

9. Remove sections 532.905–70 and 532.905–71.

10. Revise section 532.908 to read as follows:

532.908 Contract clauses.

(a) *General and architect-engineer contracts.* Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in the clauses listed below, the contracting officer must prepare a written justification explaining why a longer period is necessary. An official one level above the contracting officer must approve the justification. The time needed should be determined on a case-by-case basis.

(1) In paragraph (a)(6)(i) of the clause at FAR 52.232–25, Prompt Payment, the specified constructive acceptance period shall not exceed 30 days.

(2) In paragraph (a)(4)(i)(A) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, the specified constructive acceptance period shall not exceed 30 days.

(3) In paragraph (a)(4)(i)(B) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, the specified period for constructive approval of progress payments shall not exceed seven days.

(b) *Construction contracts.* (1) The contracting officer shall determine on a case-by-case basis the time specified for payment of progress payments as described in paragraph (a)(1)(i)(A) of the clause at FAR 52.232–27, Prompt Payment for Construction Contracts. The contracting officer shall justify in writing periods longer than 14 days. An official one level above the contracting officer must approve the justification. Under no circumstances may more than 30 days be specified for payment of progress payments.

(2) The contracting officer shall determine the time to be specified in paragraph (a)(4)(i) of FAR clause 52.232–27, for constructive acceptance or approval, on a case-by-case basis. This time may not exceed seven days unless the contracting officer justifies in writing a longer period and obtains the approval of an official one level above the contracting officer. Under no circumstances may more than 30 days be specified for constructive acceptance or approval.

(c) *Stock, Special Order, and Schedules Programs.* (1) GSA has obtained a FAR Deviation to authorize payment within 10 days of receipt of a proper invoice. The authority applies only to—

(i) Orders placed by GSA under the referenced programs;

(ii) That include FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment, and;

(iii) For which the order is placed, and the contractor submits invoices, using EDI in accordance with the Trading Partner Agreement.

(2) If the contract is for commercial items and will include FAR 52.212–4, use the clause with its Alternate II. If the contract is not for commercial items, use the clause at 552.232–25, Prompt Payment, instead of FAR 52.232–25.

532.7001 [Removed]

11. Remove section 532.7001.

12. Revise section 532.7003 to read as follows:

532.7003 Contract clause.

For indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Schedules, insert the clause at 552.232–77, Payment By Government Charge Card, if the contract will provide for payment by Government charge card as an alternative method of payment for orders. For Schedule contracts that provide for payment using the Government charge card, use the clause(s) prescribed at Part 538.

Subpart 532.71—[Removed]

13. Remove Subpart 532.71.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

15. Add section 552.212–4 to read as follows:

552.212–4 Contract Terms and Conditions—Commercial Items.

Alternate II (FAR Deviation) (DATE). When a commercial item contract is contemplated and the contract will include the clause at FAR 52.212–4, insert this Alternate II instead of paragraph (g)(2) of the FAR clause.

(g)(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over

quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

16. Amend section 552.232–1 by revising the date of the clause and paragraph (c) to read as follows:

552.232–1 Payments.

* * * * *

PAYMENTS (DATE) (DEVIATION FAR 52.232—1)

* * * * *

(c) When processing payment, GSA's Finance Office will automatically generate the 12 digit invoice number using the PDN assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 2007). The PDN appears on the contract award document.

(End of clause)

552.232–8 and 552.232–23 [Removed]

17. Remove sections 552.232–8 and 552.232–23.

552.232–25 Prompt Payment.

18. Amend section 552.232–25 by removing from the introductory text of the prescription ''532.908(a)(2)'' and adding ''532.908(c)(2)'' in its place; revising the date of the clause to read ''(Date)''; and removing from paragraph (a)(1)(i) ''Supply Service (FSS)'' and adding ''Acquisition Service (FAS)'' in its place.

552.232–70 and 552.232–71 [Removed]

19. Remove sections 552.232–70 and 552.232–71.

20. Amend section 552.232–72 by revising the section heading, the introductory text of the prescription, and the heading and date of the clause to read as follows:

552.232–72 Final Payment Under Building Services Contracts.

As prescribed in 532.904(c), insert the following clause:

FINAL PAYMENT UNDER BUILDING SERVICES CONTRACTS (DATE)

* * * * *

552.232–74 through 552.232–76 [Removed]

21. Remove sections 552.232–74 through 552.232–76.

22. Revise section 552.232–77 to read as follows:

552.232–77 Payment By Government Charge Card.

As prescribed in 532.7003, insert the following clause:

PAYMENT BY GOVERNMENT CHARGE CARD (DATE)

(a) *Definitions.*

Governmentwide commercial purchase card means a uniquely numbered charge card issued by a contractor under the GSA SmartPay®program contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

Oral order means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of ____ *____ or less for oral or written orders may be made using the Governmentwide commercial purchase card.

(c) The Contractor shall not process a transaction for payment using the charge card until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(d) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

(End of clause)

* Enter amount not to exceed $100,000.

552.232–78 through 552.232–83 [Removed]

23. Remove sections 552.232–78 through 552.232–83.

24. Add section 552.232–7007 to read as follows:

552.232–7007 Limitation of Government's Obligation.

As prescribed in 532.705–1(c), use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (DATE)

(a) Contract line item(s) ____*____ through ____*____ are incrementally funded. For these item(s), the sum of $____*____ of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates, but does not exceed, the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled ''Termination for Convenience of the Government'' or paragraph (l) entitled ''Termination for the Government's Convenience'' of the clause at FAR 52.212–4, ''Commercial Terms and Conditions-Commercial Items.'' As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least 90 days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state: (1) the estimated date when that point will be reached; and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ''Termination for Convenience of the Government'' or paragraph (l) entitled ''Termination for the Government's Convenience'' of the clause at FAR 52.212–4, ''Commercial Terms and Conditions-Commercial Items.''

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties

will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled ''Disputes.''

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ''Default'' or ''Termination for Cause.'' The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ''Termination for Convenience of the Government'' or paragraph (l) entitled ''Termination for the Government's Convenience'' of the clause at FAR 52.212–4, ''Commercial Terms and Conditions-Commercial Items.''

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract $ ____
(month) (day), (year) $ ____
(month) (day), (year) $ ____
(month) (day), (year) $ ____

(End of clause)

ALTERNATE I (DATE). If only a certain line item(s) will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Contract line item(s) ____ is incrementally funded. The sum of $____*____ is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.

* To be inserted after negotiation.

[FR Doc. E8–23660 Filed 10–6–08; 8:45 am]

BILLING CODE 6820–EP–S

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NTSB is proposing to amend its regulations concerning notification and reporting requirements with regard to aircraft accidents or incidents. The existing regulations (49 CFR 830.5) do not include certain events that the NTSB has determined to be necessary. The NTSB anticipates that these proposed amendments will enhance aviation safety by providing the NTSB with direct notification of events that involve safety concerns, thereby enabling the NTSB to conduct investigations, identify necessary corrective actions in a timely manner, and work to prevent transportation accidents.

DATES: Submit comments on or before December 8, 2008.

ADDRESSES: You may send comments using any of the following methods:

1. *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

2. *Mail:* Mail comments concerning this proposed rule to Deepak Joshi, AS–40, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594–2000.

3. *Fax:* (202) 314–6308, *Attention:* Deepak Joshi

4. *Hand Delivery:* 6th Floor, 490 L'Enfant Plaza, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deepak Joshi, Lead Aerospace Engineer (Structures), Office of Aviation Safety, (202) 314–6348.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 27, 2004, the NTSB published a notice of proposed rulemaking (NPRM) titled, ''Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records,'' in the **Federal Register** (69 FR 77150). The December 2004 NPRM proposed various changes to 49 CFR Part 830, all of which affected the types of accidents and incidents that individuals and entities must report under 49 CFR Part 830. The NTSB received numerous comments on the NPRM and carefully considered each comment. In light of some commenters' suggestions and concerns, and to ensure that the NTSB engages in all requisite statutory and regulatory analyses, the NTSB elected to revise the proposed regulations and issue a new NPRM. The NTSB has declined to implement some commenters' suggestions in some proposed sections, and the preamble for each proposed section explains the NTSB's reasoning. Each proposed revision and addition, as well as summaries of and responses to some comments from the prior NPRM, is discussed in detail below. The NTSB does not plan to issue a final notice or proceed in any way with the NPRM that was published on December 27, 2004. The NTSB intends to finalize and proceed with the NPRM herein.

Statutory and Regulatory Evaluation

This proposed rule would amend the requirements for providing immediate notification to the NTSB of certain aviation events, to include certain events that were not previously reportable. These amendments will enhance aviation safety by providing the NTSB with direct notification of these events and, thereby enabling the NTSB to conduct investigations, identify corrective actions, and propose safety recommendations in a timely manner.

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget (OMB) has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 United States Code (U.S.C.) 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The NTSB acknowledges that many commenters who submitted comments to the NTSB's previous NPRM regarding 49 CFR Part 830 opined that the NTSB's alteration of the definition of ''substantial damage'' would have resulted in an increased burden on small entities that engage in the operation of helicopters, via increased insurance rates. In this present NPRM, however, the NTSB does not propose an alteration to the definition of ''substantial damage'' or any definitions in 49 CFR Part 830; therefore, the NTSB does not foresee the proposed rule herein affecting insurance rates or causing any financial burden on small entities. Indeed, the changes to 49 CFR Part 830 that the NTSB proposes herein will only result in a potential increase in the number of reports that small entities must submit to the NTSB; the NTSB does not anticipate that submitting such reports will have any economic impact on small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB has submitted this certification to the Chief Counsel for Advocacy at the Small Business Administration.

This rule proposes no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) but will increase the number of instances in which the public provides specific information after notifying the NTSB of a reportable event. As such, the NTSB has submitted this NPRM to OMB for review under the Paperwork Reduction Act. The NTSB will continue to use Form No. 6120.1 to collect additional information when the NTSB decides to conduct an investigation arising out of an event that is reportable under 49 CFR Part 830. OMB last approved the use of Form No. 6120.1 on June 30, 2006, and this approval will expire on June 30, 2009 (OMB Control No. 3147–0001). The NTSB estimates that the annual number of respondents for the submission of this notification using the aforementioned form will increase from about 2,100 to about 2,200. All other information regarding the use of Form No. 6120.1 will remain the same. The public may submit comments regarding the collection of this information to the OMB desk officer for the NTSB.

The NTSB recognizes that Congress' intent in promulgating the Paperwork Reduction Act was to reduce the burden on individuals and ensure that the information collected would not be duplicative of other Federal information collections. The NTSB notes that some individuals or entities from which the NTSB must receive notification of an event under Sec. 830.5 may also be required to report the event to the Federal Aviation Administration (FAA). The NTSB asserts, however, that such duplicative reporting is necessary for the NTSB to fulfill its statutory mission of improving safety. For example, with regard to receiving reports of engine and propeller failure data, the NTSB must receive immediate notification of events in which debris has escaped the engine via a path other than the exhaust path, in order to make a timely decision regarding the appropriate type of response. The NTSB's response to such events could include immediately dispatching an investigator to the location of the damaged airplane or, depending on the circumstances, allowing the operator to remove the engine and have it shipped to a repair facility where the engine would be examined. Such a response would not be possible if the operator only reported the event to the FAA because the corresponding FAA regulations allow more time for reporting events when the event occurs on a weekend or holiday. See, for example, 14 CFR 21.3; 14 CFR 121.703; 14 CFR 135.415. In addition, the NTSB notes that 14 CFR 21.3(d)(1)(iii) does not require a report to the FAA if the event has been reported to the NTSB. Furthermore, immediate notification also allows the NTSB to comply with 49 CFR 830.10 and 831.12, which require return of an aircraft's wreckage to its owner in a more timely manner, thereby allowing the owner to arrange for expeditious repair of the parts. The NTSB also notes that it has experienced impediments to some investigations, such as inability to recover and examine critical parts, when the NTSB belatedly received notification of the event. Overall, the NTSB does not anticipate that duplicative reporting will be commonplace, and, to the extent that duplicate reports occur, the NTSB asserts that such reports are necessary and will not cause an undue burden on the public.

Moreover, the NTSB does not anticipate that this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination With Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements. The NTSB invites comments relating to any of the foregoing determinations and notes that the most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

Discussion of Proposed Revisions and Additions

Proposed Revision to Introductory Paragraph of § 830.5

The NTSB proposes to revise the introductory paragraph of Sec. 830.5 to reflect a change in nomenclature for the term ''regional office,'' to identify a recently established regional office in Ashburn, Virginia, and to include a reference to NTSB Headquarters in Washington, DC. In addition, the NTSB proposes to remove the reference to telephone books as a source of contact information for NTSB offices and, instead, direct the public to the NTSB Web site, which contains up-to-date instructions for reporting events listed in Sec. 830.5. Operators, or other persons or entities, who need to notify the NTSB of a reportable event under 49 CFR Part 830 may notify any NTSB regional office or NTSB Headquarters.

Proposed Revision to § 830.5(a)(3)

The NTSB proposes to revise Sec. 830.5(a)(3), which currently requires notification of an event in which a ''[f]ailure of structural components of a turbine engine[,] excluding compressor and turbine blades and vanes[,]'' occurs. The NTSB's proposed revision of Sec. 830.5(a)(3) would result in notification

of an event in which ''[f]ailure of any internal turbine engine component that results in the escape of debris other than out the exhaust path'' occurs.

The NTSB believes that such a revision will assist the NTSB with improving aviation safety. The NTSB notes that it has investigated several incidents in which liberated engine fragments penetrated the adjacent inlet or exhaust ducts before impacting the airplane. While some engine manufacturers have argued that such events were not uncontained engine failures because the debris did not penetrate the engine's cases, the NTSB asserts that the danger of liberated engine debris is cause for concern. Specifically, such debris could affect the aircraft's structure or systems or the occupants of the aircraft, even though the debris did not penetrate any of the engine's casings. Indeed, debris that escapes an engine other than out the exhaust path can pose a hazard to the airplane by damaging the structure, disabling systems, or injuring the occupants of the aircraft. Such occurrences certainly concern the NTSB, given the potential effects on the aircraft's overall safety of flight. Thus, the proposed revision to Sec. 830.5(a)(3) will require the reporting of all events in which debris escapes other than out the exhaust path, not simply those events that result in penetration of the engine casing.

In addition, the NTSB notes that recent generations of turbine engines do not have inlet guide vanes. Therefore, broken blades can escape forward of the engine's containment case. Further, new airplanes often have inlet ducts composed of composite material that may provide less containment resistance to a ballistic projectile than older metal structures. Therefore, the NTSB is equally concerned about both debris that exits forward of the inlet case through the inlet duct and debris that exits aft of the turbine case through the exhaust duct because it is debris that penetrates the side of the engine through a primary case.

The NTSB recognizes that some entities or individuals in the aviation community may be concerned that identifying the location from which the debris exited the engine may be too difficult and may, therefore, render this proposed revision to Sec. 830.5(a)(3) futile. The NTSB has considered this concern and asserts that such identification will be possible. Specifically, the NTSB is concerned with uncontained events in which internal engine pieces separate and penetrate a primary engine case or penetrate the adjacent inlet or exhaust duct, rather than contained failures, which involve a cascade of broken pieces exiting the rear of the engine exclusively through the exhaust path. In general, when engine debris penetrates an engine case or the adjacent inlet or exhaust duct, an obvious hole in the case or duct, along with the internal damage to the engine, will exist.

The NTSB also recognizes that some entities or individuals in the aviation community may contend that the NTSB should continue to include all compressor and turbine blade and vane failures. The NTSB has considered this potential viewpoint and believes that investigating every compressor or turbine blade or vane failure would likely not result in significant improvements in aviation safety. In addition, the NTSB acknowledges that some interested individuals or entities may suggest that the NTSB exclude the requirement of reporting events in which the debris escaped forward of the fan containment case. The NTSB is not inclined to implement such a suggestion, based on NTSB investigations of numerous events in which fragments that exited forward of the fan containment case or aft of the turbine case did so at such an acute angle that they were able to penetrate the airplane, thereby causing substantial damage. The NTSB recognizes that some fragments that exit forward of the fan containment case may do so at an angle that is tangential to the fuselage and, thus, would have insufficient energy to result in substantial damage to the aircraft; however, the NTSB remains interested in any event in which the failure of an internal turbine engine component results in the escape of debris other than out the exhaust path. Therefore, based on the foregoing reasons, the NTSB proposes to revise Sec. 830.5(a)(3) to require reporting of any ''[f]ailure of any internal turbine engine component that results in the escape of debris other than out the exhaust path.''

Proposed Revisions to § 830.5(a)(4), (a)(5)

The NTSB proposes to revise Sec. 830.5(a)(4) to remove the word ''or,'' the inclusion of which was a minor typographical error. In addition, the NTSB proposes to revise Sec. 830.5(a)(5) to correct the grammar and punctuation of this section. Given that these proposed revisions are insignificant, the NTSB believes that further discussion is unwarranted.

Proposed Addition of § 830.5(a)(8)

The NTSB proposes to add Sec. 830.5(a)(8) to 49 CFR Part 830 to require the reporting of any ''release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact.'' The NTSB seeks to add this section because a loss of a propeller blade presents a significant hazard to an aircraft and its occupants, given the amount of energy a propeller blade creates and maintains. In this regard, the NTSB's concern about the release of a propeller blade is similar to its concern for an uncontained engine failure, in that the liberated blade can strike the fuselage, damaging an airplane's structure and resulting in the disabling of a system or injury to the passengers and crew. The NTSB recognizes that, if the liberated blade struck the airplane, then the NTSB would receive notification and consider investigating the occurrence, in accordance with the current regulations. See 49 CFR 830.5(a) (requiring reporting of an ''aircraft accident,'' as defined at 49 CFR 830.2). The NTSB, however, has determined that events could occur in which a liberated propeller blade does not strike the airplane. In such circumstances, the NTSB is concerned that operators may determine that the current regulations do not require them to report to the NTSB an event in which they shut down the engine and accomplish an engine-out landing, if the airplane did not sustain any damage. Because propeller blade separations have the potential to cause substantial damage and have previously caused aircraft accidents, the NTSB would like to receive notification of every occasion in which a propeller blade separates, even if the event did not damage the airplane.

Furthermore, the NTSB has learned of events in which the separation of a propeller blade has raised safety concerns that the NTSB could have helped to prevent, had the NTSB received notification of such events. For example, in March 1994, a propeller blade fractured and separated from an Embraer EMB–120 operating in Brazil; however, because no significant damage to the airplane occurred, the NTSB did not receive notification of the event. In August 1995, a propeller blade separated from another Embraer EMB–120 operating in the United States; the separation caused damage to the airplane that was so severe that the pilots were required to make an off-airport forced landing, and several fatalities resulted (NTSB Investigation No. DCA95MA054). Had the NTSB been advised of the event in Brazil, the NTSB could have investigated the event and considered issuing safety recommendations that may have

ultimately prevented the August 1995 crash. Conversely, the NTSB received notification of a propeller blade separation in an ATR 42–500 that occurred in Colombia in January 2002, even though the airplane did not sustain any significant damage (NTSB Investigation No. DCA02WA018). The ensuing investigation revealed that a significant corrosion problem existed on that particular type of propeller blade; as a result, the NTSB issued several safety recommendations. Had the NTSB not received notification and participated in the investigation, the corrosion problem may have continued until another airplane's blade separated, which could have led to an accident.

The NTSB acknowledges that, in many cases, a failure of the propeller blade itself causes the loss of the blade. The NTSB notes, however, that a failure of the propeller hub could also instigate the release of a blade. The NTSB has investigated accidents in which failure of the blade itself or failure of the hub to which the blade was attached caused the loss of a propeller blade and resulted in an accident. Specifically, one such accident resulted in five NTSB safety recommendations to the FAA regarding manufacturing practices and proper blade maintenance, repair, testing, and inspection procedures. See Safety Recommendations A–96–142 through A–96–146, available at *http://www.ntsb.gov.* Another subsequent accident resulted in two NTSB safety recommendations concerning the inspection and repair of the propeller blades. See Safety Recommendations A–02–03 and A–02–04, also available at *http://www.ntsb.gov.* Overall, the NTSB has concluded that it should receive notification of such events and determine whether to conduct an investigation, independent of whether such an event has resulted in an accident, in the interest of fulfilling Congress' intent.

Finally, in this proposed section, the NTSB proposes to exclude propeller blade separations that result solely from ground contact. While the NTSB acknowledges that liberated propeller blades or blade segments pose a significant hazard to the airplane's crew and passengers, as well as to bystanders, the NTSB notes that contact with the ground is well beyond the normal operating environment and design intent of a propeller blade. As a result, operators should not expect a propeller blade to remain intact after striking the ground. Therefore, the NTSB would receive notification of events in which a propeller blade contacted the ground when the event resulted in an accident, pursuant to the NTSB's existing notification requirements. See 49 CFR 830.5(a) (requiring reporting of an ''aircraft accident,'' as defined at 49 CFR 830.2). Therefore, propeller blade separations that result solely from ground contact are not within the scope of this proposed Sec. 830.5(a)(8).

Proposed Addition of § 830.5(a)(9)

The NTSB seeks to add Sec. 830.5(a)(9) to 49 CFR Part 830, to require the reporting of: ''[a] complete loss of information, excluding flickering, from more than 50 percent of an aircraft's certified electronic primary displays.'' Through this proposed language, the NTSB seeks to require the reporting of the loss of information from a majority of an aircraft's certified electronic displays.

With regard to the terminology in this proposed section, the NTSB notes that the Federal Aviation Regulations define the term ''primary display'' as ''the display of a parameter that is located in the instrument panel such that the pilot looks at it first when wanting to view that parameter.'' See 14 CFR 23.1311(c). In addition, the NTSB asserts that the term ''flickering'' is sufficiently descriptive; the NTSB expects that a considerable majority of operators will interpret the rule correctly and provide notification when appropriate. As explained below, the NTSB seeks to receive notification of events in which a majority of an aircraft's electronic displays become completely blank and display no data or information.

The NTSB's principal intention in proposing this reporting requirement is to become informed of all instances in which more than 50 percent of primary displays go totally blank. The NTSB has determined that a series of totally blank displays in modern aircraft that were subject to reliability considerations during certification indicates a significant failure of redundancy for that aircraft system. The NTSB is concerned that this type of redundancy failure may lead to complete loss of displayed information in the future if the causes of the failure are not identified. Therefore, the NTSB emphasizes that establishing this proposed reporting requirement is necessary for improving transportation safety.

The NTSB acknowledges that, because some aircraft have a certification requirement that requires continued flight to remain possible with all electronic primary displays inoperative, the reporting of a partial loss of these displays may seem counterintuitive. However, while some aircraft do have a certification requirement for continued flight following the loss of all electronic primary displays, the NTSB has determined that a significant degradation of safety margin results from inoperative primary displays. For example, as a result of a loss of electronic failure displays, an aircraft crew may not be able to deal with the failure appropriately by solely using the stand-by displays. In addition, NTSB investigators have noted during investigations into a number of actual display loss events that the crews did not transition to the stand-by instruments and instead continued to use only a portion of the information available to them while waiting for the primary electronic displays to return to operation. Such a practice could compromise the safety of operation of the aircraft because crews would operate the aircraft in the absence of necessary information, such as navigation data, flight information, and information regarding potential failures of systems. Therefore, the NTSB proposes to require notification of such events, in the interest of investigating the circumstances of such events and assisting in preventing them.

In addition, the NTSB does not intend to narrow the scope of this proposed requirement to cover only those events that occur while the aircraft is airborne because the loss of redundancy that would cause displays to go blank on the ground could also occur while the aircraft is airborne. For example, the NTSB recognizes that a display loss event that resulted from an auxiliary power unit failure while both engines were shut down during deicing before takeoff could occur. The NTSB acknowledges that some unique events may result in the loss of the displays while on the ground that do not represent significant safety events; however, the NTSB anticipates that these types of events will be infrequent and remain in the minority of such occasions. The NTSB must take advantage of the opportunity to investigate causes of display blanking, even when the aircraft at issue was not airborne when the event occurred.

Proposed Addition of § 830.5(a)(10)

The NTSB seeks to add Sec. 830.5(a)(10) to 49 CFR Part 830, to require the reporting of: Airborne Collision and Avoidance System (ACAS) advisories issued either:

(A) When an aircraft is being operated on an instrument flight rules flight plan and corrective or evasive action is required to maintain a safe distance from other aircraft; or

(B) To an aircraft operating in class A airspace.

The NTSB anticipates that this proposed reporting requirement will notify the NTSB of the limited number of encounters that may evidence a serious safety risk and warrant further investigation, in accordance with the NTSB's statutory purpose and mission. This proposed addition will not necessitate the reporting of resolution advisories that arise from benign events but will capture the incidents that are more likely to warrant further safety investigation.

The NTSB acknowledges that resolution advisories are transmitted over mode S data link and may, therefore, be subject to recording at ground-based receivers. The NTSB recognizes that, while such a method of data collection is technically possible, the infrastructure to provide this capability is not sufficiently common to ensure that the NTSB would receive notification of the event through this method. The NTSB also recognizes that pilots involved in loss-of-separation incidents also may make verbal reports to air traffic control (ATC) facilities or may file formal near-midair collision reports through the FAA. The NTSB has determined, however, that the internal process for such reporting of safety events occurring within the ATC system may not be entirely reliable. Further, not all aircraft proximity events that provoke safety concerns meet the FAA's criteria for formal reporting as an operational error or other incident. Therefore, the NTSB has concluded that a source of safety reports not solely dependent on ATC will provide a useful means of ensuring that serious incidents receive adequate attention and will enable improvements to the ATC reporting process, where needed.

Furthermore, the NTSB notes that operators and other reporting individuals or entities should not be concerned that this proposed addition will require frequent removal and retention of aircraft recorders after submission of the required reports. While the NTSB may require operators to provide flight data recorder data as part of incident investigations, the NTSB does not anticipate that this will normally be necessary after ACAS incidents occur, unless other information indicates that a very serious threat of collision clearly existed. Overall, the NTSB is aware that recorder access can be problematic for aircraft operators and will make every effort to minimize the need for such information following incidents reported under this requirement.

The NTSB anticipates that this proposed reporting requirement will assist the NTSB in improving aviation safety by preventing future accidents and incidents because it will provide the NTSB with information concerning events in which aircraft crews perceived that they had been exposed to a collision hazard. As the International Civil Aviation Organization (ICAO) recently noted, current NTSB regulations do not specifically require the notification of air proximity events. In response to this finding, the NTSB notes that this proposal to require notification of such events is consistent with the ICAO standard, which seeks immediate notification of ''near collisions requiring an avoidance [maneuver].''

Proposed Addition of § 830.5(a)(11)

The NTSB seeks to add Sec. 830.5(a)(11) to 49 CFR Part 830, to require that the public report ''[d]amage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s).'' The NTSB's previous NPRM sought to amend the definition of ''substantial damage'' such that the NTSB would consider damage that a helicopter tail or main rotor blade sustained to be ''substantial damage'' and, therefore, reportable. In light of the comments that the NTSB received on this proposed change, the NTSB determined that such an amendment to the definition of ''substantial damage'' was not necessary and that the NTSB could instead achieve its purpose of receiving notification of damage that a helicopter tail or main rotor blade sustains by adding this proposed subsection to Sec. 830.5(a). In accordance with this proposed change, the NTSB intends to require owners, operators, and other individuals or entities to report as incidents all rotor blade strikes that result in damage, regardless of what the blades struck.

Receiving reports of damage to rotors under Sec. 830.5 will allow the NTSB and the aviation industry to work cooperatively on these occurrences, and such cooperation is paramount in addressing and resolving operational or mechanical safety issues. In addition, the NTSB's proposal to add this subsection to Sec. 830.5 will resolve the NTSB's concern that operators are misinterpreting 49 CFR Part 830 and are failing to report instances in which collateral damage to other dynamic or structural components of helicopters occurs during blade strikes.

Including damage to rotor blades as reportable incidents will serve to improve safety and to accomplish the NTSB's mission in a number of ways. For example, such notification will help the NTSB collect data for further refinement and standardization of categorizing helicopter accidents and incidents. The NTSB believes that this proposed addition will, as a result of consistent notification, serve to identify those events that may indicate or identify flight safety issues. In particular, some operational occurrences of tail and main rotor blade damage could adversely affect the structural strength, performance, or flight characteristics of a helicopter, and Congress has charged the NTSB with assisting with the prevention of occurrences such as these.

The NTSB also notes that events involving damage to rotor blades may present legitimate safety issues. For example, on May 3, 2003, a California police helicopter struck power lines during a forced landing that followed an engine malfunction (NTSB Investigation No. LAX04TA202). The tail rotor blade sustained damage, and the operators flew the helicopter to another destination; the flight crew initially reported the damage as minor. The NTSB investigated the occurrence and noted that the engine malfunction resulted from an inadequate overhaul of an engine component. As a result of this finding, the engine manufacturer revised its overhaul procedures to provide for more detailed instructions, thereby improving transportation safety. In addition, the NTSB investigated a helicopter accident that occurred on July 7, 2006, in Hawaii (NTSB Investigation No. LAX06CA227). During the course of this accident, all main rotor blades of the helicopter sustained damage upon striking a tree while landing during an animal eradication flight. The NTSB identified safety issues regarding inadequate preflight planning and in-flight decision-making and notified the operator and the FAA of these deficiencies.

As these examples demonstrate, the NTSB works to improve transportation safety by investigating accidents and making safety recommendations to a variety of entities and organizations. Such safety improvements can occur without a formal safety recommendation and may result from either the NTSB's identification of a trend that may inhibit safe transportation or the NTSB's investigation into the circumstances and facts of a specific occurrence. In this regard, the proposed addition of requiring the public to report occurrences in which a helicopter sustains damage to its tail or main rotor blade will allow the NTSB to obtain data to identify potential trends in helicopter transport that may be of concern and to consider investigating the facts of a specific occurrence.

With regard to the NTSB's intent to collect data regarding helicopter occurrences in the interest of improving safety, the NTSB plans to analyze such data and findings, identify potential trends or areas of concern, and subsequently work through the safety recommendation process to improve safety. Congress has directed the NTSB to collect accident data, and the NTSB has created searchable databases for such data. See 49 U.S.C. 1116. The NTSB may store the data and findings from occurrences of rotor blade damage in a similar manner, to allow investigators to analyze these data and findings in the aggregate. In any event, such data collection will allow the NTSB to identify trends that could indicate potential safety deficiencies and to simplify and accelerate the process of issuing potential safety recommendations.

While this proposed addition will require notification of events in which a helicopter tail or main rotor blade sustains damage, the NTSB notes that it is not seeking the reporting of minor damage that does not adversely affect the performance of the helicopter, such as minor foreign object damage or damage confined to blade balance tabs. Overall, this proposed addition to Sec. 830.5 will enable the NTSB to improve safety with regard to helicopter operations.

Proposed Addition of § 830.5(a)(12)

The NTSB seeks to add Sec. 830.5(a)(12) to 49 CFR Part 830, to require the reporting of:

Any runway incursion event in which an operator, when operating an aircraft as an air carrier:

(A) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or

(B) Experiences a reduction in separation that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision.

In this proposed notification requirement, the NTSB proposes to use the definition of ''runway incursion'' that the FAA and ICAO currently use; however, the NTSB proposes to require the reporting of only certain types of runway incursions. Under FAA and ICAO guidance, a runway incursion is ''any occurrence at an [airport] involving the incorrect presence of an aircraft, vehicle or person on the protected area of a surface designated for the landing and take-off of an aircraft.'' See FAA Notice NJO7050.1, *Air Traffic Organization Policy* (Oct. 1, 2007); ICAO Procedures for Air Navigation Services—Air Traffic Management, *PANS ATM Document 4444* (January 2003). The NTSB's proposed notification requirement would require reports of a subset of runway incursions, as specifically designated at proposed subsections (A) and (B).

Moreover, the NTSB's proposed use of the term ''air carrier'' is also consistent with that of the FAA, which defines ''air carrier'' as ''any person or organization who undertakes, whether directly or indirectly, or by lease or any other arrangement, to engage in air transportation and conducts operations in accordance with 14 CFR [Parts] 121 and 135.'' See FAA Order 8020.11B and 14 CFR 1.1.

With regard to the intended interpretation of subsection (B) in the NTSB's proposed addition of Sec. 830.5(a)(12), the NTSB notes that crews often may not be aware that they were involved in a situation in which separation between their aircraft and a nearby or adjacent aircraft decreased. Therefore, the NTSB attempts to exclude reports of separation decreases that are nominal or so minor that the operator is not aware of the event. As such, the NTSB intends to add the phrase ''requires the operator to take immediate corrective action to avoid a collision'' to exclude separation decreases in which neither operator notices or is aware of any separation decrease, or no maneuvering is required to avoid a collision. Therefore, with regard to subsection (B) of the proposed addition of Sec. 830.5(a)(12), the NTSB intends to require notification of separation decreases about which an operator involved becomes aware and takes action to avoid a collision.

Moreover, concerning subsection (B) of the proposed requirement, the NTSB notes that this requirement would apply to certain situations in which a non-air carrier operator must take evasive action to avoid a collision with an air carrier aircraft. For instance, if a Cessna 172 aircraft on departure must take evasive action to avoid a Boeing 747 aircraft that has inadvertently entered the runway, this proposed rule would require a report of the incident. The flight crew of a large air carrier aircraft may not even be aware that a smaller aircraft was in close proximity to it and had to take evasive action. The proposed rule would, nevertheless, require a report of the incident because an air carrier was involved and at least one of the aircraft had to take evasive action to avoid a collision.

Furthermore, the NTSB notes that this proposed notification requirement does not include runway incursions in which ample time and distance exist to avoid a collision. The NTSB seeks to receive notification of events that require the crew to take evasive action to avoid another aircraft, a vehicle, a person, equipment, or the like; therefore, the NTSB intends to interpret the term ''reduction in separation'' in the proposed requirement to include a decrease in separation with any object or person. In addition, as stated above, this proposed requirement would only apply to air carriers that operate under 14 CFR Parts 121 or 135, not operators who operate under 14 CFR Part 91. Overall, while the NTSB is aware that numerous runway incursions occur each day, the NTSB notes that this proposed notification requirement would not include a substantial number of such incidents, given the limitations that the proposed regulatory language includes.

The NTSB is aware that operators may be concerned about the time limits for such notification. The NTSB intends to enforce this proposed notification requirement as one that requires notification as soon after the incident as such notification is practicable and safe. For example, as defined above, an aircraft that has experienced a runway incursion upon taking off should notify the NTSB as soon as the aircraft lands at its next destination, if the incursion occurs within the time period that immediately precedes takeoff and the operator is unable to notify the NTSB immediately without compromising the safe operation of the aircraft. Likewise, an aircraft that experiences a runway incursion as defined above upon landing should notify the NTSB as soon as the operator is able to provide such notification without compromising the safe operation of the aircraft. Overall, the NTSB intends to interpret this proposed rule to require notification as soon as the operator is able to provide such notification safely.

The NTSB notes that this proposed reporting requirement is consistent with the NTSB's statutory mission of investigating aviation accidents and incidents and improving transportation safety for the public. The proposed requirement would require notification of circumstances in which an operator narrowly avoided a collision. In addition, this proposed requirement would mandate notification of incidents in which a significant potential for a collision existed and in which an operator aggressively swerved, abruptly slowed or stopped, or rotated and lifted off earlier than planned in the aircraft to avoid a collision. Such events could be the result of operator error, mechanical malfunctions, air traffic controller errors, or a variety of other potential

factors or causes. The NTSB's act of investigating and identifying such factors and causes, and issuing safety recommendations to prevent future occurrences, is the NTSB's principal statutory mission. In particular, notification of such events will greatly enhance the NTSB's ability to improve aviation safety via the NTSB's investigations and safety recommendations; in the absence of such notification, the NTSB must rely on news media sources or the FAA. While such resources are helpful, they do not comprise or amount to timely, direct notification of such events to the NTSB, which is critical for the NTSB's purpose of conducting timely, thorough, effective investigations that are independent. Furthermore, indirect notification also fails to meet ICAO standards and recommended practices.

The NTSB has investigated several incidents of runway incursions and issued safety recommendations as a result of such incidents. For example, the NTSB's investigation into a runway incursion that resulted in a fatal aviation accident on August 27, 2006, in Lexington, Kentucky, determined that the crew's failure to use available cues and aids to identify the airplane's location on the airport surface during taxi, and their failure to cross-check and verify that the aircraft was on the correct runway, resulted in the accident. As a result of this investigation, the NTSB issued several safety recommendations to the FAA: to revise work scheduling policies to reduce the potential of air traffic controllers performing duties while fatigued, to establish initial and recurrent training programs for all air traffic controllers, and to prohibit the issuance of a takeoff clearance during an airplane's taxi to its departure runway until after the airplane has crossed all intervening runways.

In addition, the NTSB also investigated a runway incursion that occurred on June 9, 2005, in Boston, Massachusetts, in which two transport-category aircraft nearly collided due to an air traffic controller's failure to follow an FAA order and the standard operating procedures for the ATC tower. This determination resulted in a safety recommendation that the NTSB issued directly to the Boston ATC facility, in which the NTSB recommended that controllers engage in a specific dialogue to ensure that the receiving controller has a timely reminder that the runway is in use and prompt the receiving controller to resolve immediately any conflicts concerning presence on the runway. The NTSB has also issued other safety recommendations to the FAA as the result of several runway incursions that the NTSB has investigated, specifically involving procedural changes, such as ensuring that all runway crossings be authorized only by specific ATC clearance, and ensuring that pilots receive adequate notification of clearance changes. See Safety Recommendations A–00–067 and A–00–068, which are available at *http://www.ntsb.gov.* The NTSB anticipates that these recommendations will assist in reducing the number of runway incursions and, therefore, will improve transportation safety. Such a practice is consistent with the NTSB's statutory purpose and Congress's intent. See 49 U.S.C. 1116(b); H.R. Rep. No. 103–239(I) at 1 (1993) (emphasizing the importance of the NTSB's safety recommendations and stating that such recommendations ''have saved countless human lives'').

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR Part 830 as follows:

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

1. The authority citation for part 830 is revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); Federal Aviation Act of 1958, Pub. L. No. 85–726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Sec. 830.5 is amended by revising the introductory text, paragraphs (a) introductory text, (a)(3) through (5), and adding paragraphs (a)(8) through (12) to read as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (NTSB) office,[1] when:

(a) An aircraft accident or any of the following listed serious incidents occur:

* * * * *

(3) Failure of any internal turbine engine component that results in the escape of debris other than out the exhaust path;

(4) In-flight fire;

(5) Aircraft collision in flight;

* * * * *

(8) Release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact;

(9) A complete loss of information, excluding flickering, from more than 50 percent of an aircraft's certified electronic primary displays;

(10) Airborne Collision and Avoidance System (ACAS) resolution advisories issued either:

(i) When an aircraft is being operated on an instrument flight rules flight plan and corrective or evasive action is required to maintain a safe distance from other aircraft; or

(ii) To an aircraft operating in class A airspace;

(11) Damage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s);

(12) Any runway incursion event in which an operator, when operating an aircraft as an air carrier:

(i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or

(ii) Experiences a reduction in separation that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision.

* * * * *

Dated: October 1, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8–23665 Filed 10–6–08; 8:45 am]

BILLING CODE 7533–01–P

[1] NTSB regional offices are located in the following cities: Anchorage, Alaska; Atlanta, Georgia; West Chicago, Illinois; Denver, Colorado; Arlington, Texas; Gardena (Los Angeles), California; Miami, Florida; Parsippany, New Jersey (metropolitan New York City); Seattle, Washington; and Ashburn, Virginia. In addition, NTSB headquarters is located at 490 L'Enfant Plaza, SW., Washington, DC 20594. Contact information for these offices is available at *http://www.ntsb.gov.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 080730953–81003–01]

RIN 0648–AX04

Endangered and Threatened Wildlife and Plants: Proposed Rulemaking to Designate Critical Habitat for the Threatened Southern Distinct Population Segment of North American Green Sturgeon; Notification of Public Workshop; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshop; correction to a proposed rule.

SUMMARY: We, NMFS, will convene a public workshop in Sacramento, CA on October 16, 2008, to collect information and to provide an opportunity for the public and other interested parties to comment on the proposed rulemaking to designate critical habitat for the threatened Southern Distinct Population Segment of North American green sturgeon. This document also contains a correction to the proposed rulemaking.

DATES: The public workshop will be held on Thursday, October 16, 2008, from 9 a.m. to approximately 5 p.m., Pacific Daylight Time.

ADDRESSES: The public workshop will be held at the Federal Building, CALFED Conference Room (5th Floor), 650 Capitol Mall, Sacramento, CA 95814–4706. Written comments may also be submitted by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 1–562–980–4027, Attention: Melissa Neuman.
- Mail: Submit written comments to the Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 650 Capitol Mall, Sacramento, CA 95814–4706.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or orherwise sensitive or protected information

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe file fomats only.

Comments mailed, faxed, or electronically submitted must be received by 5 p.m. (PST) on November 7, 2008 to be considered.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region, (562) 980–4115, *Melissa.Neuman@noaa.gov*, or Susan Wang, NMFS, Southwest Region, (562) 980–4199, *Susan.Wang@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*; hereafter, ''Southern DPS'') was listed as threatened under the Endangered Species Act (ESA) on April 7, 2006 (71 FR 17757). A proposed rule to designate critical habitat for the threatened Southern DPS of green sturgeon was published in the **Federal Register** on September 8, 2008 (73 FR 52084). The areas proposed for designation include: coastal U.S. marine waters within 110 meters (m) depth from Monterey Bay, California (including Monterey Bay), north to Cape Flattery, Washington, including the Strait of Juan de Fuca, Washington, to its United States boundary; the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco bays in California; the lower Columbia River estuary; and certain coastal bays and estuaries in California (Humboldt Bay), Oregon (Coos Bay, Winchester Bay, and Yaquina Bay), and Washington (Willapa Bay and Grays Harbor). The areas proposed for designation comprise approximately 325 miles (524 km) of freshwater river habitat, 1,058 square miles (2,739 sq km) of estuarine habitat, 11,927 square miles (30,890 sq km) of coastal marine habitat, and 136 square miles (352 sq km) of habitat within the Yolo and Sutter bypasses (Sacramento River, CA).

Under section 7 of the ESA, Federal agencies would be required to insure that any actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. A wide range of agency actions may be subject to the ESA section 7 consultation process including, but not limited to: the installation and operation of hydropower dams; the installation and operation of water diversions; in-water construction or alterations; dredging operations and disposal of dredge material; NPDES permit activities and activities generating non-point source pollution (e.g., agricultural runoff); power plant operations; operations of liquefied natural gas (LNG) projects; tidal or wave energy projects; discharges from desalination plants; commercial shipping (e.g., discharges, oil spills); aquaculture; bottom trawl fisheries; and habitat restoration activities. We solicit additional information and comments from the public concerning this proposed rule, including information and comments on the biological basis supporting the proposed rule; the benefits of the proposed critical habitat designation to the Southern DPS of green sturgeon; and the economic, national security, and other relevant impacts of the proposed designation.

Public Workshop

Interested parties may contribute written or oral comments and information regarding the proposed critical habitat rule to NMFS during a public workshop on Thursday, October 16, 2008, from 9 a.m. to 5 p.m. at the Federal Building, CALFED Conference Room (5th Floor), 650 Capitol Mall, Sacramento, CA 95814–4706.

Please be advised that weapons, cameras, and cell phones with cameras are prohibited in the Federal building. Members of the public attempting to enter the building with any of these items will be denied access and will be asked to return said item(s) to their vehicles before entering the building.

Need for Correction to the Proposed Rulemaking

As published, the notice of proposed rulemaking (73 FR 52084; September 8, 2008) contains an error in the map of proposed critical habitat for the Southern DPS in California. The spatial extent of the Sacramento-San Joaquin Delta, California, as depicted on the overview map on page 52110, does not match the textual description of the Delta found in 50 CFR 226.216(a)(3)(i) of the proposed regulatory text. The textual description of proposed critical habitat in the Delta is correct, but the map is incorrect. This error may prove to be misleading and is in need of correction.

Correction

Accordingly, the proposed rule, published on September 8, 2008 at 73 FR 52084, is corrected as follows:

On page 52110, replace the map of proposed critical habitat for the Southern DPS of green sturgeon in California with the following map:

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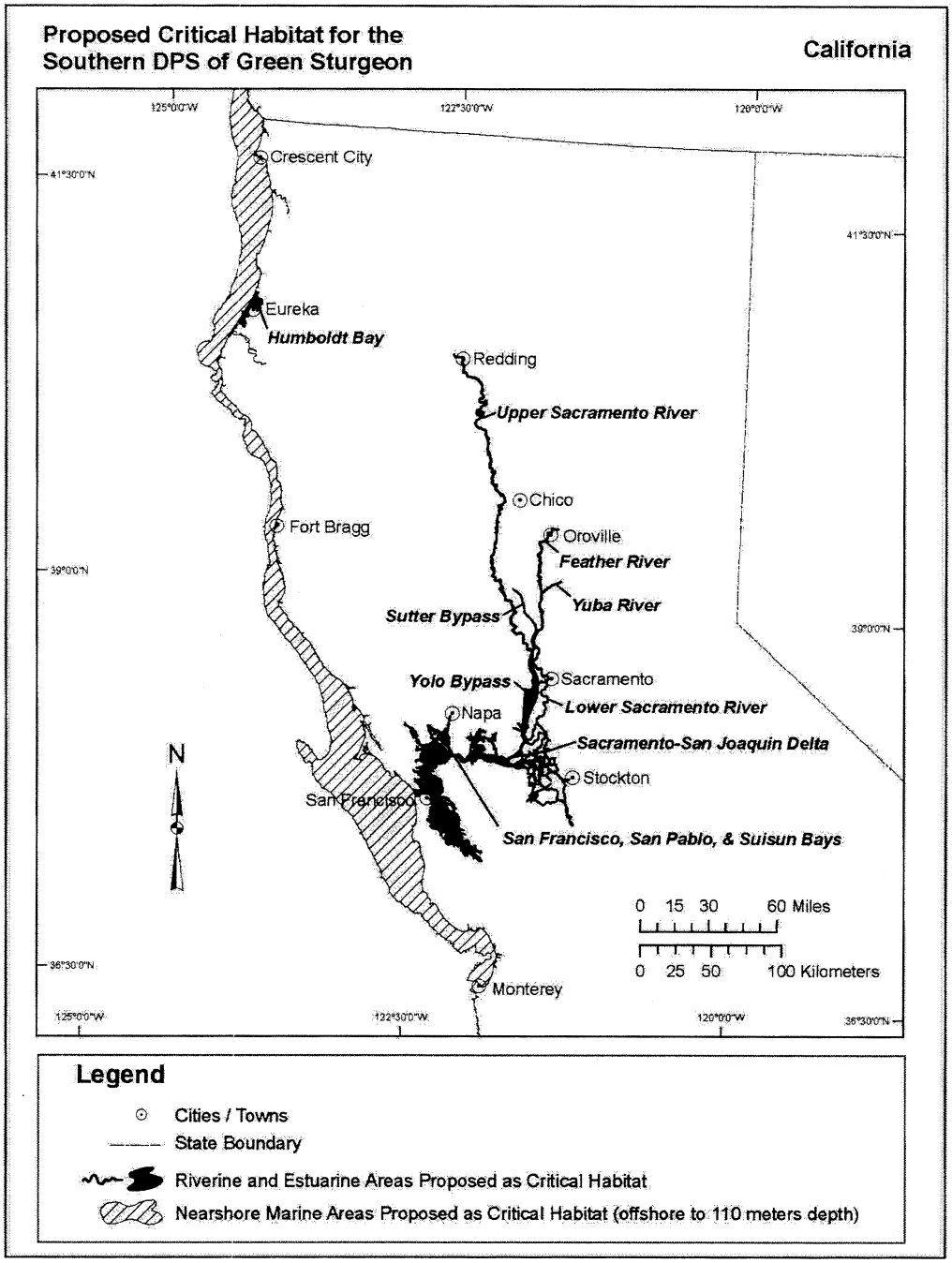

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Melissa Neuman (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 30, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23657 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 73, No. 195
Tuesday, October 7, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0120]

Notice of Request for Approval of an Information Collection; Enforcement Operations Survey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection for a survey by APHIS' Investigative and Enforcement Services unit.

DATES: We will consider all comments that we receive on or before December 8, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0120* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0120, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0120.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on the survey, contact Dr. Allison Khroustalev, Chief, Enforcement Operations Branch, Investigative and Enforcement Services, MRPBS, APHIS, 4700 River Road Unit 85, Riverdale, MD 20737; (301) 734–0624. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Enforcement Operations Survey.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The primary mission of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, is to protect American agriculture. To carry out its mission, APHIS administers regulations under the Plant Protection Act and Animal Health Protection Act that govern the importation, entry, exportation, and movement in interstate commerce of certain animals, plants and their products to prevent the introduction and spread of exotic pests and diseases into and within the United States. APHIS also administers regulations under the Animal Welfare Act to ensure the humane handling, care, treatment, and transportation of animals covered by the Act; the Horse Protection Act to prohibit the exhibition, sale, transport across State lines, show, or auction of horses subjected to soring; and the Agricultural Bioterrorism Protection Act to regulate the possession, use, or transfer of biological agents and toxins that present a serious threat to animal or plant health.

The Investigative and Enforcement Services (IES) unit of APHIS helps ensure compliance with the regulations. IES does this by conducting investigations and taking enforcement actions when necessary. Enforcement actions initiated by IES' Enforcement Operations Branch (EOB) include the issuance of warning letters and the assessment of stipulated civil penalties. These activities involve communications with persons alleged to have violated agency regulations. IES also conducts education programs to help those subject to Agency regulations understand the regulations and how to comply with them.

The EOB's management systems have been certified by the International Organization of Standardization (ISO, a nongovernmental worldwide network of national standards institutes). Such certification recognizes the EOB for, among other things, meeting certain performance standards and continuously striving to improve its performance. As part of the process for maintaining certification, the EOB must conduct research into the effectiveness of its program and its communications with regulated entities and persons. The EOB plans to do this, in part, by conducting a telephone survey of a sample of persons who have been subject to IES-initiated enforcement actions.

Responders will be asked to rate their experience and interaction with EOB with regard to such things as the clarity of the information in EOB written communications, the timeliness of EOB responses to telephone messages and letters, and the knowledge, professionalism, and helpfulness of the EOB staff who dealt with the responder.

IES will use the information from the survey to improve communications with alleged violators, as well as to maintain ISO certification.

We are asking the Office of Management and Budget (OMB) to approve this information collection for 1 year.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: The violators for every 10th case closed, not sent to the Office of the Inspector General, USDA.

Estimated annual number of respondents: 175.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 175.

Estimated total annual burden on respondents: 43.75 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of October 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–23702 Filed 10–6–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0034]

Notice of Request for Extension of a Currently Approved Information Collection (Consumer Complaint Monitoring System and Food Safety Mobile Questionnaire)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request an extension of an approved information collection regarding both its Consumer Complaint Monitoring System web portal and its electronic Food Safety Mobile questionnaire because the approval for this information collection is due to expire. The public may comment on either the entire information collection or on one of its two parts.

DATES: Comments on this notice must be received on or before December 8, 2008.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

Mail, including floppy disks or CD–ROMs, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, FSIS Docket Room, 1400 Independence Avenue, SW., Room 2534, Washington, DC 20250.

All submissions received must include the Agency name and docket number FSIS–2008–0034. Documents referred to in this notice, and all comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2008_Notices_Index/index.asp.* Individuals who do not wish FSIS to post their personnel contact information—mailing address, e-mail address, telephone number-on the Internet may leave this information off of their comments.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 3532 South Building, Washington, DC 20250–3700; (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Consumer Complaint Monitoring System; the Food Safety Mobile Questionnaire.

Type of Request: Extension of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension of an approved information collection addressing paperwork and recordkeeping requirements regarding the Agency's Consumer Complaint Monitoring System web portal and regarding its electronic Food Safety Mobile questionnaire.

FSIS tracks consumer complaints about meat, poultry, and egg products. Consumer complaints are usually filed because the food made the consumer sick, caused an allergic reaction, was not properly labeled (misbranded), or contained a foreign object. FSIS has developed a web portal to allow consumers to electronically file a complaint with the Agency about a meat, poultry, or egg product. FSIS will use this information to look for trends that will enhance the Agency's food safety efforts.

FSIS uses a Food Safety Mobile, a vehicle that travels throughout the continental United States, to educate consumers about the risks associated with the mishandling of food and the steps they can take to reduce their risk of foodborne illness.

Organizations can request a visit from the FSIS Food Safety Mobile although the availability of the Mobile is limited. To facilitate the scheduling of the Food Safety Mobile's visits when it is available, the Agency has put an electronic questionnaire on its web site. The questionnaire solicits information about the person/organization requesting the visit, the timing of the visit, and the type of event at which the Food Safety Mobile is to appear.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .214 hours per response.

Respondents: Consumers and organizations.

Estimated Number of Respondents: 650.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 139 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Ave., SW., Room 3532 South Building, Washington, DC 20250–3700; (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Notices_Index/*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on: October 2, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–23681 Filed 10–6–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest, CA, Klamath National Forest Motorized Route Designation EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Klamath National Forest (Klamath NF) will prepare an Environmental Impact Statement to disclose the impacts associated with the following proposed actions:

1. The prohibition of cross-country motorized vehicle travel (with the exception of snowmobiles) off designated National Forest System (NFS) roads, trails, and areas by the public except as allowed by permit or other authorization (Travel Management Rule, 36 CFR Part 212 Subpart B).

2. Make a non-significant amendment to the Klamath NF Land and Resource Management Plan (Klamath Forest Plan) to conform with the Travel Management Rule, Subpart B, by removing reference to OHV cross-country travel in the Forest Plan and including a Forest-wide standard: ''Prohibit motorized vehicle travel (with the exception of snowmobiles) off designated roads, trails and areas except as allowed by permit or other authorization.''

3. Add approximately 54 miles (84 segments) of existing unauthorized routes to the National Forest Transportation System (NFTS) as roads open to the public for motorized vehicle use by vehicle class and season of use. Add approximately 24 miles (258 routes) of existing unauthorized routes to the NFTS as roads open to the public for motorized vehicle use to access dispersed recreation opportunities (e.g. river access, dispersed camping, etc.), by vehicle class and season of use.

4. Add approximately 14 miles (22 segments) of existing unauthorized routes to the NFTS as motorized trails open to the public for motorized vehicle use by vehicle class and season of use.

5. Allow motorized vehicle use on two areas (65 acres) where use of motorized vehicles by the public would be allowed anywhere within that delineated area.

6. Make the following changes to existing Forest roads:

a. Allow non-highway legal vehicle use on approximately 88 miles (24 segments) of existing NFTS roads where such use is currently prohibited.

b. Prohibit non-highway legal vehicle use on approximately 10 miles (8 segments) of existing NFTS roads where such use is currently allowed.

c. Open NFTS roads 41S10 and 40N51 to public use where such use is currently prohibited to enhance motorized recreation by creating a loop opportunity.

DATES: The comment period on the proposed action will extend 30 days from the date the Notice of Intent is published in the **Federal Register**.

Completion of the Draft Environmental Impact Statement (DEIS) is expected in May 2009 and the Final Environmental Impact Statement (FEIS) is expected in July 2009.

ADDRESSES: Send written comments to: Route Designation Team, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097. Electronic comments, in acceptable plain text (.txt), rich text (.rtf), or Word (.doc) may be submitted to *comments-pacificsouthwest-klamath@fs.fed.us* with Subject: Route Designation.

FOR FURTHER INFORMATION CONTACT: Emelia Barnum, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097. *Phone:* 530–841–4470.

SUPPLEMENTARY INFORMATION:

Background

Over the past few decades, the availability and capability of motorized vehicles, particularly off-highway vehicles (OHVs) and sport utility vehicles (SUVs) has increased tremendously. Nationally, the number of OHV users has climbed sevenfold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000. The ten states with the largest population also have the most OHV users. California has 4.35 million OHV users accounting for almost 11 percent of the U.S. total (Off-Highway Vehicle Recreation in the United States, Regions and States: A National Report from the National Survey on Recreation and the Environment (NSRE) Cordell, Betz, Green and Owens June 2005). There were 786,914 all terrain vehicles (ATVs) and OHV motorcycles registered in 2004, up 330 percent since 1980. Annual sales of ATVs and OHV motorcycles in California were the highest in the U.S. for the last 5 years. Four-wheel drive vehicle sales in California also increased by 1500 percent to 3,046,866 from 1989 to 2002.

Unmanaged OHV use has resulted in unplanned roads and trails, erosion,

watershed and habitat degradation, and impacts to cultural resource sites. Compaction and erosion are the primary effects of OHV use on soils. Riparian areas and aquatic dependent species are particularly vulnerable to OHV use. Unmanaged recreation, including impacts from OHVs, is one of ''Four Key Threats Facing the Nation's Forests and Grasslands.'' (USDA Forest Service, June 2004).

On August 11, 2003, the Pacific Southwest Region of the Forest Service entered into a Memorandum of Intent (MOI) with the California Off-Highway Motor Vehicle Recreation Commission, and the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation. That MOI set in motion a region-wide effort to ''Designate OHV roads, trails, and any specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California by 2007.'' On November 9, 2005, the Forest Service published final travel management regulations in the **Federal Register** (FR Vol. 70, No. 216—Nov. 9, 2005, pp. 68264–68291). Subpart B of the final Travel Management Rule requires designation of those roads, trails, and areas that are open to motor vehicle use on National Forests. Route designations will be made by class of vehicle and, if appropriate, by time of year. The final rule allows for motor vehicle use only on designated system routes and in designated areas.

On some NFS lands, long managed as open to cross-country motor vehicle travel, repeated use has resulted in unplanned, unauthorized, roads and trails. These routes generally developed without environmental analysis or public involvement, and do not have the same status as NFS roads and NFS trails included in the forest transportation system. Nevertheless, some unauthorized routes are well-sited, provide excellent opportunities for outdoor recreation by motorized and non-motorized users, and would enhance the National Forest system of designated roads, trails and areas. Other unauthorized routes are poorly located and cause unacceptable impacts. Only NFS roads and NFS trails can be designated for wheeled motorized vehicle use. In order for an unauthorized route to be designated, it must first be added to the NFTS.

In accordance with the MOI, the Klamath NF completed an inventory of unauthorized routes on National Forest lands and identified approximately 400 miles (1079 segments) of unauthorized routes. The Klamath NF then used an interdisciplinary process to evaluate the routes that included working with the public to determine whether any of the unauthorized routes should be proposed for addition to the NFTS in this proposed action. Roads, trails, and areas that are currently part of the Klamath NF transportation system and are open to wheeled motorized vehicle travel will remain designated for such unless changed by this proposal. This proposal focuses only on the prohibition of wheeled motorized vehicle travel off designated routes and needed changes to the Klamath NF transportation system, including the addition of some unauthorized routes to the Klamath NF transportation system and minor changes to existing motor vehicle restrictions. The proposed action is being carried forward in accordance with the Travel Management Rule (36 CFR Part 212, Subpart B). In accordance with the Travel Management Rule, following a decision on this proposal, the Klamath NF will publish a Motor Vehicle Use Map (MVUM) identifying all Klamath NF roads, trails, and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Unauthorized routes not included in this proposal are not precluded from future consideration for addition to the NFTS and inclusion in a MVUM. Future decisions associated with changes to the MVUM may trigger the need for documentation of environmental analysis.

Purpose and Need for Action

The following needs have been identified for this proposal:

1. There is a need for regulation of unmanaged motor vehicle travel by the public. The proliferation of unplanned, unauthorized, non-sustainable roads, trails and areas adversely impacts the environment. The 2005 Travel Management Rule, 36 CFR Section 212, Subpart B, provides for a system of NFS roads, NFS trails and areas on NFS lands that are designated for motor vehicle use. After roads, trails and areas are designated, motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13. Subpart B is intended to prevent resource damage caused by unmanaged motor vehicle use by the public.

2. There is a need for the Klamath Forest Plan to conform to the Travel Management Rule, 36 CFR 212, Subpart B. A review of the Forest Plan has found that it is not fully consistent with the Travel Management Rule, Subpart B. For example, the Klamath Forest Plan EIS states that off highway vehicle use is allowed where it is not (1) Legislatively restricted, (2) causing unacceptable resource damage, or (3) in conflict with other activities. The objective is to restrict use only where there is a demonstrated need. The Klamath Forest Plan includes standards and guidelines that prohibit or restrict OHV use in certain land allocations (e.g., research natural areas, backcountry areas), but OHV use is generally allowed in the other land allocations. About 70 percent of the Forest is open to unrestricted OHV use. These Forest Plan standards and guidelines are in conflict with the Travel Management Rule, at 36 CFR 212.50(a) (Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13).

3. There is a need for limited changes to the Klamath NF transportation system to:

3.1. Provide wheeled motorized access to dispersed recreation opportunities (camping, hunting, fishing, hiking, horseback riding, etc.). There is a need to maintain motor vehicle access to dispersed recreation activities that historically have been accessed by motor vehicles. A portion of known dispersed recreation activities are not located directly adjacent to an existing NFTS road or NFTS motorized trail. Some dispersed recreation activities depend on foot or horseback access, and some depend on motor vehicle access. Those activities accessed by motor vehicles consist of short spurs that have been created and maintained primarily by the passage of motorized vehicles. Many such 'user-created' routes are not currently part of the NFTS. Without adding them to the NFTS, the regulatory changes noted above would make continued use of such routes illegal through the prohibition of cross country travel and would preclude access to many dispersed recreation activities.

3.2. Provide a diversity of wheeled motorized recreation opportunities (4x4 vehicles, motorcycles, ATVs, passenger vehicles, etc.). It is Forest Service policy to provide a diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest recreation role and land capability (FSM 2353.03(2)). Implementation of Subpart B of the Travel Management Rule will severely reduce motorized recreation opportunities relative to current levels. As a result, there is a need to consider limited changes and additions to the type of use permitted on existing NFTS roads as well as potential additions to the NFTS.

4. There is a need for socially compatible non-highway legal vehicle use in the vicinity of Hawkinsville where trespass, destruction of private property, and other use conflicts facilitated by the use of off-highway vehicles have become a problem. The Forest Plan specifies coordination of road management objectives with private landowners within the Forest (Forest Plan Standard and Guideline 20–3). Previous complaints from residential owners and comments during the Steps 1–3 for this project focused on needs for management changes on all or portions of 40N21, 43N30, 45N03X, 45N28, 45N29, 45N39, 46N16, and 46N16A.

In meeting these needs, the proposed action must also achieve the following purposes:

A. Provide for public safety.

B. Provide access to public and private lands.

C. Administer and maintain roads, trails, and areas based on availability of resources.

D. Minimize damage to soil, vegetation and other forest resources.

E. Avoid impacts to cultural resources.

F. Minimize harassment of wildlife and significant disruption of wildlife habitat.

G. Minimize conflicts between motor vehicles and existing or proposed recreational uses of NFS lands.

H. Minimize conflicts among different classes of motor vehicle uses of NFS lands or neighboring federal lands.

I. Assure compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, etc.

J. Maintain valid existing rights of use and access (rights-of-way).

K. Constrain the proposal to that which is within the capability of the Forest to analyze given: 1. The national schedule for regions to publish their Forest Motor Vehicle Use Maps. For the Klamath National Forest the publication deadline is approximately September 2009. 2. Available funding (road and trail management budgets). 3. Available resources (resource data and staff time).

Proposed Action

1. Prohibit cross-country motorized vehicle travel (with the exception of snowmobiles) off designated Forest roads, trails, and areas by the public except as allowed by permit or other authorization.

2. Make a non-significant amendment to the Klamath Forest Plan to be consistent with the Travel Management Rule (36 CFR Part 212, Subpart B), prohibiting cross-country motorized vehicle travel off designated NFS roads and NFS trails outside of designated areas by removing reference to OHV cross-country travel in the Forest Plan and including a forest-wide standard: ''Prohibit wheeled vehicle travel off designated roads and trails except for administrative use or uses under permitted activities or within designated areas.''

3. Add approximately 54 miles (84 routes) of existing unauthorized routes as NFTS roads classified as open to all vehicle classes, both highway legal and non-highway legal, by season of use. The season of use for approximately 8 miles (14 routes) of road is from May 1–October 31 (the remainder will be open year round). Add approximately 24 miles (258 routes) of existing unauthorized routes to the NFTS as roads open to the public for wheeled motorized vehicle use to access dispersed recreation opportunities (e.g., river access, dispersed camping, etc.), by vehicle class and season of use. With these additions, roads open to all vehicle classes will be approximately 2618 miles.

4. Add approximately 14 miles (22 routes) of existing unauthorized routes as NFTS motorized trails. This would bring the total NFTS motorized trails to 15 miles. Approximately 2 miles of motorized trails would be classified as open for ''All Trail Class Vehicles''. About 4 miles of motorized trails would be classified as open for ''Motorcycle only''. The remaining 8 miles of motorized trails would be classified as open for ''Vehicles 50 inches or less in width''. The season of use for all 14 miles of trail is from May 1–October 31.

5. Add two areas (Humbug [13 acres] and Juniper Flat [52 acres]) where use of motorized vehicles by the public would be allowed anywhere within that delineated area.

6. Make the following changes to existing Forest roads:

a. Allow non-highway legal vehicle use on approximately 88 miles (24 segments) of existing NFS roads where such use is currently prohibited.

b. Prohibit non-highway legal vehicle use on approximately 10 miles (8 segments) of existing Forest roads where such use is currently allowed.

c. Open Forest Maintenance Level 1 roads 41S10 (Doe Peak) and 40N51 (Yellowjacket Ridge) to public use where such use is currently prohibited.

Maps and tables describing the proposed action can be found at *http://www.fs.fed.us/r5/klamath/projects/ohv/index.shtml*. In addition, maps will be available for viewing at:

- Klamath National Forest Supervisor's Office, 1312 Fairlane Road, Yreka, CA 96097.
- Happy Camp/Oak Knoll Ranger District, 63822 Highway 96, Happy Camp, CA 96039.
- Goosenest Ranger District, 37805 Highway 97, Macdoel, CA 96058.
- Salmon/Scott River Ranger District, 11263 N. Highway 3, Fort Jones, CA 96032.
- Ukonom Ranger District, Highway 96, Orleans, CA 95556.

Responsible Official

Patricia A. Grantham, Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to existing prohibitions and allowances for public motorized vehicle travel within the existing Klamath NF Transportation System and prohibit cross country wheeled motorized vehicle travel by the public off the designated system. Once the decision is made, the Klamath NF will publish a MVUM identifying the roads, trails and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated. Future decisions associated with changes to the MVUM may trigger the need for documentation of environmental analysis.

This proposal does not revisit previous administrative decisions that resulted in the current NFTS. This proposal is focused on implementing Subpart B of the Travel Management Rule. Previous administrative decisions concerning road construction, road reconstruction, trail construction, and land suitability for motorized use on the existing NFTS are outside of the scope of this proposal.

Scoping Process

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The Klamath NF has been meeting with local elected officials, Tribes, and community groups, including service and professional organizations, to discuss the Travel Management Rule and travel management on the Forest since 2005. In March and April of 2005,

and April and May 2007, public workshops were held in Fort Jones, Happy Camp, Macdoel, and Yreka, CA to gather information about which routes the public uses. In March 2008, public workshops were held in those same locations as well as Orleans, CA, to continue gathering information about which routes the public uses and to identify routes missed in the inventory of unauthorized routes. Additionally, maps of inventoried routes were available on the Forest's Web site and Forest Service offices. The public used these maps to provide input into the process.

The comment period on the proposed action will extend 30 days from the date this Notice of Intent is published in the **Federal Register**.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May 2009. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45-days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Klamath NF participate at that time.

The final EIS is scheduled to be completed in July 2009. In the final EIS, the Forest Service will respond to comments received during the comment period that are: within the scope of the proposed action; specific to the proposed action; have a direct relationship with the proposed action; and include supporting reasons for the responsible official to consider. Submission of comments to the draft EIS is a prerequisite for eligibility to appeal under the 36 CFR part 215 regulations.

Comment Requested

This Notice of Intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft EIS will be prepared for comment. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

At this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: September 30, 2008.

Patricia A. Grantham,

Forest Supervisor.

[FR Doc. E8–23683 Filed 10–6–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; National Immunization Survey Evaluation Study

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before December 8, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Andrea L. Piani, Census Bureau, Room HQ–6H035, Washington, DC 20233–8400, (301) 763–5379.

SUPPLEMENTARY INFORMATION

I. Abstract

At the behest of the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, the Census Bureau plans to conduct an evaluation study of the National Immunization Survey (NIS). The purpose of this study is to explore how collaborating with the Census Bureau and using the American Community Survey (ACS) as the sampling frame for selecting eligible households could result in improvements to the current NIS. Use of the ACS as a sampling frame, which includes non-landline households and identifies households with age-eligible children, could overcome the current NIS non-coverage issue and substantially reduce data collection costs.

The NIS is a continuing, nationwide random-digit-dialing (RDD) telephone survey of families with children ages 19 to 35 months, or teens ages 13–17 years followed by a mailed survey to children's immunization providers. Since the survey's inception to the present, private contractors have conducted the NIS for the CDC. National, state, and local level estimates of vaccine-specific coverage, including newly licensed vaccines, are produced annually.

The NIS was established to provide an on-going, consistent data set for analyzing vaccination coverage among young children in the United States and disseminating this information to state and local health departments and other interested public health partners. Legal authorization to conduct the survey is

granted by Title 13, United States Code, Section 8 and by the Public Health Service Act, Title 42, United States Code, Sections 306 & 2102(a)(7).

In response to one of the goals of the 1993 Childhood Immunization Initiative, to monitor childhood immunization coverage and provide important statistics about childhood vaccinations and related health matters, funding for the NIS was provided and data collection began in April 1994. Furthermore, the scope of the program expanded to include assessing progress towards the national vaccination goals set forth by the Childhood Immunization Initiative of 1996. Currently, the NIS provides vaccination coverage estimates annually for children aged 19–35 months and teens aged 13–17 years, by state and at least six city/county areas. The information collected is used to evaluate state and local immunization programs, to develop health care policies, and to assist in the determination of funding allocations for the Vaccines for Children (VFC) program. Since 1994, the VFC program has helped families of children who may not otherwise have access to vaccines by providing free vaccines to doctors who serve them.

In recent years, the NIS has covered a decreasing portion of the target population, particularly children aged 19–35 months living in households with cell phone, but not landline telephone service. As part of the CDC's continuing effort to evaluate and refine the NIS, this study is intended to explore how partnering with the Census Bureau and sampling from the ACS for households with age-eligible children having landline, cell phone only, and no telephone service could result in improvements to the survey especially in terms of coverage, response, and cost.

II. Method of Collection

Data collection for the NIS Evaluation Study will use a multi-mode approach. First, computer-assisted telephone interviewing (CATI) will be conducted with households with age-eligible children (19–35 months) to collect information on the vaccinations received for each age-eligible child, as well as information on vaccination providers. Second, in-person follow-up interviews with non-responders, including households with no telephone service, will be conducted. Due to constraints in time and resources, the follow-up interviews for the evaluation study will be conducted using paper-and-pencil interviewing methods. If the results from the evaluation study prove beneficial, in-person follow-up interviews for the national survey will be conducted using computer-assisted personal interviewing (CAPI) methods whereby field representatives collect the data from respondents using laptop computers. Third, vaccination providers will be contacted through the use of a paper mail-out/mail-back process. Providers will submit information on vaccinations administered and the dates the vaccinations were administered for each child 19 through 35 months. Only providers of age-eligible children whose parent or guardian participated in the telephone or paper follow-up survey and who gave consent to follow-up with the provider will be contacted. The provider information on the type of vaccine, the number of vaccinations, and the dates of vaccination will be used to estimate vaccination coverage levels; the information obtained from the parent or guardian will be used to evaluate the completeness of the provider-reported information.

III. Data

OMB Control Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals/households; business or other for-profit organizations (Health Care Providers).
Estimated Number of Respondents: 1,200 children in 1,185 households; 1,510 providers.
Estimated Time Per Response: 28 minutes, 2 seconds (household component); 25 minutes, 2 seconds (provider verification component).
Estimated Total Annual Burden Hours: 564 hours (household component), 634 hours (provider verification component).
Estimated Total Annual Cost: $0.
Respondent's Obligation: Voluntary.
Legal Authority: All information collected about individuals or households is confidential by law Title 13, United States Code, Section 9. Legal authorization to conduct the survey is granted by Title 13, United States Code, Section 8 and by the Public Health Service Act, Title 42, United States Code, Sections 306 & 2102(a)(7).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–23559 Filed 10–6–08; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–2008]

Foreign-Trade Zone 82—Mobile, AL; Application for Subzone; ThyssenKrupp Steel and Stainless USA, LLC, (Stainless and Carbon Steel Products), Calvert, AL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mobile, grantee of FTZ 82, requesting special-purpose subzone status for the stainless and carbon steel products manufacturing facility of ThyssenKrupp Steel and Stainless USA, LLC (ThyssenKrupp), located in Calvert, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 1, 2008.

The ThyssenKrupp facility (2,500 employees, 3,515 acres/square feet, 4.5 million metric ton capacity for carbon steel products and 1 million metric ton capacity for stainless steel products) is located at 1 ThyssenKrupp Drive, near the city of Calvert, Washington and Mobile Counties, Alabama. The facility will be used for the manufacturing, processing and distribution of carbon and stainless steel products. Components and materials sourced from abroad (representing 44% of the value of finished stainless steel products and 45% of the value of the finished carbon steel products) include: Ferrochromium, unwrought molybdenum, ferrosilicon, articles of titanium, ferrosilicon manganese, unwrought titanium, ferro-niobium, ferro-boron, wire and rods of agglom, unwrought aluminum and zinc (duty rate ranges from duty-free to 15%).

FTZ procedures would exempt ThyssenKrupp from customs duty

payments on the foreign components used in export production. The company anticipates that some 27 percent of the plant's stainless steel shipments and 5–10 percent of its carbon steel shipments will be exported. On its domestic sales, ThyssenKrupp would be able to choose the duty rates during customs entry procedures that apply to the finished stainless steel and carbon steel products (duty-free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 8, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 22, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the City Clerk, City of Mobile, 9th Floor, South Tower, Government Plaza, 205 Government Street, Mobile, AL 36602.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230.

For further information, contact Elizabeth Whiteman at *Elizabeth_Whiteman@ita.doc.gov* or (202) 482–0473.

Dated: October 1, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–23737 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–2–2008]

Foreign-Trade Zone 26—Atlanta, GA; Application for Temporary/Interim Manufacturing Authority; Termination of Review; Kia Motors Manufacturing Georgia, Inc. (Motor Vehicles)

Notice is hereby given that the Foreign-Trade Zones (FTZ) Board staff has terminated its review of the application requesting temporary/interim manufacturing (T/IM) authority within FTZ 26 at the Kia Motors Manufacturing Georgia, Inc. (KMMG) facility in West Point, Georgia. The application was filed on May 7, 2008 (73 FR 27492, 5–13–2008). Substantive comments submitted in opposition to the KMMG application during the public comment period remove the application from eligibility under the specific T/IM standard of ''clearly presenting no new, complex, or controversial issues'' (*see* ''Proposals to Facilitate the Use of Foreign-Trade Zones by Small and Medium-Sized Manufacturers,'' 69 FR 17643, 4/5/2004). The review was terminated on September 12, 2008.

Dated: September 26, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–23738 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1576]

Grant of Authority for Subzone Status; Baker Hughes, Inc. (Barite Milling), Corpus Christi, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application to the Board for authority to establish a special-purpose subzone at the barite milling facility of Baker Hughes, Inc., located in Corpus Christi, Texas (FTZ Docket 15–2008, filed 2/25/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 12949, 3/11/08); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to barite milling at the facility of Baker Hughes, Inc., located in Corpus Christi, Texas (Subzone 122Q), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 18th day of September, 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–23740 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Comment Card for E-mail Taglines

AGENCY: U.S. and Foreign Commercial Service.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 8, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Suzan Winters—*Phone:* (202) 482–6042,

Suzan.Winters@mail.doc.gov, Fax: (202) 482–2599.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small- and medium-sized companies, export their products and services to global markets. As part of its mission, the U.S. Commercial Service (CS) currently uses customer satisfaction surveys to collect feedback from U.S. business clients that pay for services performed by CS. These surveys ask the client to evaluate CS on its customer service provision. The results from the surveys are used to make improvements to the agency's business processes in order to provide better and more effective export assistance to U.S. companies. In addition to soliciting client feedback after a service is delivered, the CS would like to add a tagline with a link to a Comment Card at the bottom of all employees' e-mail messages to enable clients to submit feedback anytime they see fit. The actual tagline would encourage recipients of the e-mail to click the Comment Card link and provide feedback on service quality. Samples of taglines could be similar to:

(1) ''Please tell me about the quality of service that I have provided to you;'' or

(2) ''Please let me know how well I have served you.''

A link to a Comment Card would immediately follow the tagline. The purpose of the attached card is to collect feedback from U.S. businesses that interact with CS employees. This information will be used for quality assurance purposes. Survey responses will be used to assess client satisfaction, identify client issues, record client results and recognize exemplary service providers.

II. Method of Collection

Comment Card link embedded in employees' e-mail taglines; clients will fill out and submit the Comment Cards electronically.

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Response: 5–10 minutes.

Estimated Total Annual Burden Hours: 833.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–23560 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–919]

Antidumping Duty Order: Electrolytic Manganese Dioxide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on an affirmative final determination by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing an antidumping duty order on electrolytic manganese dioxide (EMD) from the People's Republic of China (PRC).

DATES: *Effective Date:* October 7, 2008.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan at (202) 482–0414, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2008, the Department published the final determination of sales at less than fair value of EMD from the PRC. See *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) (''*Final Determination*'').

On August 18, 2008, Guizhou Redstar Developing Import & Export Co., Ltd. (''Redstar'') submitted ministerial error allegations with respect to the Department's *Final Determination.* On August 25, 2008, Tronox LLC, Petitioner, submitted a reply to Redstar's ministerial error allegations, arguing that the Department should reject each of Redstar's claims. On October 1, 2008, the Department determined that Redstar's ministerial error allegations do not meet the requirements under 19 CFR 351.224(f) to be considered ministerial errors. See Memorandum entitled ''Final Results of Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People's Republic of China: Allegations of Ministerial Errors,'' dated October 1, 2008.

On September 26, 2008, the ITC notified the Department of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of EMD from the PRC. See Letter from the ITC to the Secretary of Commerce, ''Notification of Final Affirmative Determination of Electrolytic Manganese Dioxide from Australia and from the People's Republic of China,'' Investigation Nos. 731–TA–1124 and 1125 (September 26, 2008). Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on the subject merchandise.

Scope of the Order

The merchandise covered by this order includes all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further information from the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of EMD from the PRC. These antidumping duties will be assessed on all entries of EMD entered, or withdrawn from the warehouse, for consumption on or after March 26, 2008, the date on which the Department published its notice of preliminary determination in the **Federal Register**. See *Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 15988 (March 26, 2008).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of the exporters that account for a significant proportion of EMD in the PRC, we extended the four-month period to no more than six months. See Letter from Guizhou Redstar Developing Import and Export Company, Ltd. (March 11, 2008). In the underlying investigation, the six-month period beginning on the date of the publication of the preliminary determination ended on September 22, 2008. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of EMD from the PRC entered, or withdrawn from warehouse, for consumption on or after September 22, 2008, through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.

On and after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below.

Exporter	Producer	Weighted-average margin (percent)
Guizhou Redstar Developing Import and Export Company, Ltd ..	Guizhou Redstar Developing Dalong Manganese Industrial Co., Ltd.	149.92
PRC-Wide Entity	.....	149.92

This notice constitutes the antidumping duty order with respect to EMD from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: October 1, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–23600 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–806]

Antidumping Duty Order: Electrolytic Manganese Dioxide From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on an affirmative final determination by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing the antidumping duty order on electrolytic manganese dioxide (EMD) from Australia.

DATES: *Effective Date:* October 7, 2008.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla at (202) 482–3477 or Minoo Hatten at (202) 482–1690, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2008, the Department published the final determination of sales at less than fair value of EMD from Australia. See *Notice of Final Determination of Sales at Less Than Fair Value and Termination of Critical-Circumstances Investigation: Electrolytic Manganese Dioxide from Australia*, 73 FR 47586 (August 14, 2008).

On September 26, 2008, the ITC notified the Department of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of EMD from Australia. See Letter from the ITC to the Secretary of Commerce, ''Notification of Final Affirmative Determination of Electrolytic Manganese Dioxide from Australia and the People's Republic of China,'' Investigation Nos. 731–TA–1124 and 1125 (September 26, 2008). Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on the subject merchandise.

Scope of the Order

The merchandise covered by this order includes all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS

subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further information from the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of EMD from Australia. These antidumping duties will be assessed on all entries of EMD entered, or withdrawn from the warehouse, for consumption on or after March 26, 2008, the date on which the Department published its notice of preliminary determination in the **Federal Register**. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia*, 73 FR 15982 (March 26, 2008).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of the exporter that accounts for a significant proportion of EMD in Australia, we extended the four-month period to no more than six months. See Letter from Delta EMD Australia Ltd. (March 25, 2008). In the underlying investigation, the six-month period beginning on the date of the publication of the preliminary determinations ended on September 22, 2008. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of EMD from Australia entered, or withdrawn from warehouse, for consumption on or after September 22, 2008, through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.

On and after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below.

Producer or exporter	Weighted-average margin (percent)
Delta EMD Australia Pty. Limited	83.66
All Others	83.66

This notice constitutes the antidumping duty order with respect to EMD from Australia, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: October 1, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–23603 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Harvard University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 08–043. *Applicant:* Harvard University, Cambridge, MA 02138. *Instrument:* Electron Microscope, Model Tecnai G2 F20 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 73 FR 52297, September 9, 2008.

Docket Number: 08–044. *Applicant:* Pennsylvania University, Hershey, PA 17033. *Instrument:* Electron Microscope, Model JEM 1400. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 73 FR 52297, September 9, 2008.

Docket Number: 08–045. *Applicant:* University of Texas at Austin, Austin, TX 78712. Tecnai G2 Spirit Bi0TWIN Republic. *Intended Use:* 2008. *Instrument:* Electron Microscope, *Manufacturer:* FEI Company, Czech See notice at 73 FR 52297, September 9, 2008.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: September 30, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff Import Administration.

[FR Doc. E8–23581 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

New Mexico Institute of Mining and Technology, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce,

14th and Constitution Ave., NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 08–040. *Applicant:* New Mexico Institute of Mining and Technology; Socorro, New Mexico 87801. *Instrument:* Unit Telescope. *Manufacturer:* Advanced Mechanical and Optical Systems SA (AMOS), Belgium. *Intended Use:* See notice at 73 FR 52644, September 10, 2008. *Reasons:* The instrument has the following features which are essential to the research. The instrument is able to be relocated, the functions of the instrument are able to be controlled and monitored over a network connection, and the instrument has an aperture greater than one-meter.

Docket Number: 08–042. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35294. *Instrument:* FIE Vitrobot. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 73 FR 52644, September 10, 2008. *Reasons:* The instrument has a controlled environmental chamber and the capability of fully automated operation. These features are required for the research.

Dated: September 30, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E8–23583 Filed 10–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting the first administrative review of the antidumping duty order on certain lined paper products (''CLPP'') from the People's Republic of China (''PRC'') with respect to four producers/exporters for the period April 17, 2006, through August 31, 2007. We have preliminarily determined that sales have been made below normal value (''NV'') by Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li''). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: October 7, 2008.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Cindy Lai Robinson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** an antidumping duty order on certain lined paper products from the PRC.[1] On September 4, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain lined paper products from the PRC for the period April 17, 2006, through August 31, 2007.[2] On September 28, 2007, the following parties requested the Department to conduct an administrative review of themselves in the antidumping review of CLPP from the PRC: Lian Li; Hwa Fuh Plastics Co. Ltd./Li Teng Plastics (Shenzhen) Co., Ltd. (''H.F. Plastics/L.T. Plastics''); Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory (''Denmax/Leo's Products''); and the Watanabe Group (which consists of the following three companies: Watanabe Paper Products (Shanghai) Co. Ltd. (''Watanabe Shanghai''); Watanabe Paper Products (Linqing) Co. Ltd. (''Watanabe Linqing''); and Hotrock Stationery (Shenzhen) Co. Ltd. (''Hotrock Shenzhen'')

On October 1, 2007, the Association of American School Paper Suppliers, a domestic interested party and Petitioner in the underlying investigation, requested that the Department conduct an administrative review of the Watanabe Group and Lian Li as well as any of these companies' subsidiaries or affiliates (as well as predecessor and successor companies), whether directly to the United States or indirectly through third countries. On October 31, 2007, the Department initiated this review with respect to all requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 61621 (October 31, 2007).

On May 6, 2008, the Petitioner submitted a request for an extension for these preliminary results. On June 5, 2008, the Department published a notice extending the time period for issuing the preliminary results for 120 days to September 29, 2008. *See Certain Lined Paper Products From the People's Republic of China: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 31964 (June 5, 2008).

Respondent Selection and Quantity and Value

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.[3] However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

The Department obtained CBP quantity and value data for the parties for which a review was requested. After assessing its resources, the Department determined that it can reasonably examine one of the four exporters subject to this review. On November 7, 2007, the Department selected Lian Li as a mandatory respondent in this investigation.[4]

On November 8, 2007, the Department issued its initial sections A, C, and D antidumping duty questionnaire to Lian Li. On December 6, 2007, Lian Li

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006) (Lined Paper Order).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 50657 (September 4, 2007).

[3] Regarding respondent selection in general, see also 19 CFR 351.204(c).

[4] *See* Memorandum to Wendy J. Frankel, Director, AD/CVD Operations, Office 8, from Marin Weaver, International Trade Compliance Analyst, AD/CVD Operations, Office 8, titled, ''Selection of Respondents for the Antidumping Review of Certain Lined Paper Products from the People's Republic of China'' (November 7, 2007) (''Respondent Selection Memo'').

submitted its Section A response to the Department's original questionnaire, and on January 23, 2008, Lian Li submitted its supplemental Section A questionnaire response. On January 3, 2008, Lian Li submitted its section C response to the Department's original questionnaire and on March 6, 2008, Lian Li submitted its supplemental section C questionnaire response. On January 10, 2008, Lian Li submitted its Section D response to the Department's original questionnaire and on January 23, 2008, Lian Li submitted its supplemental section D questionnaire response. On April 11, 2008, Lian Li submitted its fourth and fifth supplemental responses to the Department's supplemental questionnaires.

On May 1, 2008, the Petitioner submitted deficiency comments regarding Lian Li's supplemental questionnaire response.

On September 12, 2008, the Petitioner submitted pre–preliminary results comments. On September 18, 2008, Lian Li submitted a letter to correct certain errors contained in its factors of production (''FOP'') database.

Period of Review

The period of review (''POR'') is April 17, 2006, through August 31, 2007.

Surrogate Country and Factors

On November 9, 2007, the Department requested that the Office of Policy provide a list of surrogate countries for this review.[5] On December 20, 2007, the Office of Policy issued its list of surrogate countries.[6] On January 18, 2008, the Department requested that interested parties submit surrogate country selection comments. On February 22, 2008, the Department selected its surrogate country for this review.[7] The Department received Lian Li's and the Petitioner's comments on April 1, and on April 8 and 15, 2008, respectively.

[5] *See* Memorandum to Ron Lorentzen, Director, Office of Policy, from Wendy Frankel, Director, Office 8, AD/CVD Operations, titled, ''Certain Lined Paper Products from the People's Republic of China: Request for Surrogate Country Selection'' (November 9, 2007).

[6] *See* Memorandum to Wendy Frankel regarding the Request for a List of Surrogate Countries, dated December 20, 2007 (''Office of Policy Surrogate Countries Memo'').

[7] *See* Memorandum to the File from Andrea Berton, International Trade Compliance Analyst, Office 8, AD/CVD Operations, titled, ''2006/2007Administrative Review of the Antidumping Duty Order of Certain Lined Paper Products from the People's Republic of China: Selection of a Surrogate Country'' (February 22, 2008) (''Surrogate Country Selection Memo'').

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non–school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or tear–out size), and are measured as they appear in the product (i.e., stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
- three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre–printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double–margin vertical ruling line down the center of the page. For a six–inch by nine–inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook

organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- FiveStar® Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2–3/8″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar® Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover.

The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope). Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Non–Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. *See*, *e.g.*, *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764 (December 16, 2005) (unchanged in final).[8] Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See*, *e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 58672 (October 7, 2005) (unchanged in final);[9] and *Carbazole Violet Pigment 23 from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65073, 65074 (November 7, 2006) (unchanged in final).[10] None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's FOPs, to the extent possible, in one or more market–economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* ''Office of Policy Surrogate Countries Memo.'' In addition, based on publicly available information placed on the record (*e.g.*, production data), India is a significant producer of the subject merchandise.[11] *Id.* Further, we have available on the record of this segment of the proceeding information with which to value the FOPs and determine surrogate financial ratios in India. Accordingly, we have selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate–country selection.

Application of Facts Available

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' (''FA'') if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within

[8] *See Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006).

[9] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006)

[10] *See Carbazole Violet Pigment 23 from the People's Republic of China: Fianl Results of Antidumping Duty Administrative Review and Rescission in Part*, 72 FR 26589 (May 10, 2007).

[11] *See* Memorandum from Andrea Berton, International Trade Compliance Analyst, Office of AD/CVD Enforcement, through Blanche Ziv, Program Manager, Office of AD/CVD Enforcement, to File, ''2006/2007 Administrative Review of the Antidumping Duty Order of Certain Lined Paper Products from the People's Republic of China: Selection of a Surrogate Country'' (February 22, 2008) (''Surrogate Country Memo'').

the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

To date in this review, as stated above in the ''Background'' section, the Department has issued five supplemental questionnaires to Lian Li. Although Lian Li responded to the Department's original and five supplemental questionnaires, for the reasons discussed below, the Department finds that the FOP databases submitted by Lian Li for its two unaffiliated suppliers, Shanghai Sentian Paper Product Co., Ltd. (''Sentian'') and Shanghai Miaopanfang Paper Product Co., Ltd. (''MPF'') cannot be relied on for purposes of calculating NV for these preliminary results. In addition, the Department finds that Lian Li also failed to provide FOP data for certain merchandise it produced and sold in the United States during the POR. Accordingly, the Department finds that for purposes of these preliminary results, application of FA to Lian Li is warranted, in accordance with section 776(a) of the Act.

A. Application of Adverse Facts Available for the FOP Data of Lian Li's Suppliers

In its original Section A response, Lian Li stated that, in addition to its own production, it purchased and resold merchandise which was produced by two unaffiliated suppliers, Sentian and MPF. Lian Li provided three separate FOP databases, one for each of the three producers in its original Section D response. It also provided a consolidated FOP database inclusive of FOPs for all three producers. Because the initial FOP databases did not have proper supporting documentation and because Lian Li did not provide reconciliations as requested, on January 17, 2008, the Department issued a supplemental questionnaire. The Department requested that Lian Li provide, for each producer of subject merchandise, reconciliations for the reported FOPs, as was required in the Department's original questionnaire at Appendix V. In the same letter, the Department also requested that Lian Li provide proper worksheets which can be tied to the financial statements or accounting records of each respective producer. Although Lian Li provided some worksheets in its responses dated January 24 and February 27, 2008, the Department found that the ''worksheets in and of themselves cannot be relied upon without support from the appropriate source documentation''[12] and therefore, the Department issued another supplemental Sections C and D questionnaire on March 6, 2008, in which it requested supporting documentation for the three largest raw material inputs and the three largest packing material inputs for June 2006.

In its April 11, 2008, response at 12, Lian Li indicated that because Sentian and MPF are affiliated with each other and share the same management and accounting staff, the same accountant collectively gathered all production, warehouse and sales records. Furthermore, Lian Li stated that the FOP databases provided by Sentian and MPF were based on arbitrary sales and manufacturing costs assigned to each company's books and records by the companies' accountant. Therefore, Lian Li claimed that ''the only way to make the cost as accurate as possible based on the accounting records of the affiliated companies is to combine the total production and total consumption of these two affiliated companies together, as they have done in their own records, and calculate a combined variance for both companies.''

It is the Department's practice to rely on accurate information submitted by respondents to calculate dumping margins in an antidumping duty proceeding. *See PRC Wooden Bedroom Furniture*.[13] When the Department finds that a respondent's reported information is not reliable, the Department will resort to FA. *Id*. Specifically, in the Department's recent decision in *PRC Wooden Bedroom Furniture*, the Department concluded that a respondent's submitted data are not reliable when the data cannot be tied to reliable financial statements or a reliable financial recording system. In this case, Lian Li states that the reported FOPs of both of its suppliers, Sentian and MPF, are arbitrarily assigned and therefore not accurate. Lian Li further states that the FOP data cannot be tied to the books and records of the two companies. Furthermore, based on the information on the record at this point in the review, it is not clear whether Sentian's and MPF's accounting books and records are reliable, given the arbitrary manner in which sales and costs were assigned.

Because, by Lian Li's own admission, the reported FOP data provided by Sentian and MPF are arbitrary and inaccurate, we preliminarily find that such data are unreliable and therefore cannot be used for these preliminary results. Thus, the Department will use the facts otherwise available to calculate NV for subject merchandise produced by Sentian and MPF for these preliminary results of review.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences may be employed ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*).

In this case, Sentian and MPF knew that their reported FOP data were inaccurate and based on arbitrarily assigned numbers which could not be tied to their accounting books and records and were therefore unreliable. However, the Department was not informed of such fact until the last supplemental questionnaire response was filed. Sentian and MPF clearly should have known that if the FOP data are arbitrarily assigned numbers and cannot be tied to any of the companies' accounting records, the data cannot be relied upon by the Department. In this regard it is important to note that FOPs for Sentian and MPF were examined and verified in the investigation phase of this proceeding, and where such FOPs were found to be unreliable, the Department in that segment resorted to

[12] *See* the Department's supplemental Sections C and D questionnaire dated March 6, 2008, at 3.

[13] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273 (February 13, 2008) (''*PRC Wooden Bedroom Furniture*'').

FA, with an adverse inference. Thus, Sentian and MPF were aware of the Department's requirements and standards from the very beginning of this review.

Had Lian Li, Sentian and MPF informed the Department of this problem in its original or first supplemental Section D questionnaire responses, dated January 11 and 23, 2008, respectively, the Department would have had the opportunity to further examine the issue and, if warranted, consider alternatives to the use of the unreliable data. However, Sentian and MPF withheld this information for three additional months until Lian Li filed its response to the Department's March 6, 2008, supplemental questionnaire. As such, the Department preliminarily finds that Sentian and MPF did not act to the best of their ability in this review, within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to the FOPs for subject merchandise produced by Sentian and MPF. *See Nippon*, 337 F.3d at 1382–83.

In *Nippon*, the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department ''must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations.'' Next the Department must ''make a subjective showing that the respondent . . . has failed to promptly produce the requested information'' and that ''failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.'' The Court clarifies further that ''{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made.'' *See Nippon*, at 1382–83.

In the underlying investigation, the Department examined and verified the FOPs of Sentian and MPF and where it found that Sentian and MPF were unable to substantiate their reported consumption for a particular FOP, mixed–pulp paper, the Department resorted to FA with an adverse inference. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from People's Republic of China*, 71 FR 53079 (September 8, 2006) (''*PRC Lined Paper Investigation Final*''), and accompanying Issues and Decision Memorandum at Comment 18.. In its final determination, the Department, citing *Nippon*, concluded that Lian Li and its producers were responsible for demonstrating the reliability of their own data, and found the company unable to substantiate its reported consumption for a particular FOP. Therefore, the Department concluded that Sentian and MPF did not cooperate to the best of their ability with respect to this FOP, mixed–pulp paper consumption, and applied FA with an adverse inference to Sentian's and MPF's paper consumption. As adverse facts available (''AFA''), the Department applied the highest reported paper consumption rate for any single CONNUM from any of Lian Li's other suppliers. *Id.*

Therefore, we preliminarily determine that Sentian and MPF should have known from the beginning of this review that the requested information would be required and that by failing to maintain and provide the information, they have failed to cooperate to the best of their ability. As such, an adverse inference is warranted in this review.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006) (quoting *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at LTFV and Final Negative Circumstances*, 67 FR 55792 (August 30, 2002)).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, the Department has preliminarily assigned the highest NV for any single matching control number (''CONNUM'') from the three producers at issue in this review, Lian Li, Sentian, and MPF, to all subject merchandise produced by Sentian and MPF. This is consistent with the Department's practice in similar situations.[14] *See also PRC Lined Paper Investigation Final*. The Department finds that this adverse inference is sufficient to effectuate the purpose of the facts available rule (*i.e.*, we find that this is sufficient to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

After issuance of these preliminary results, however, the Department expects to issue an additional questionnaire to Lian Li to seek further clarification on certain information, including Sentian's and MPF's FOP data, which was submitted on the record in this proceeding.

B. Application of Facts Otherwise Available for Certain of Lian Li's Own FOP Data

In the U.S. sales database submitted by Lian Li dated April 11, 2008, with respect to its own production, the Department found several sales CONNUMs for which Lian Li did not report matching FOP CONNUMs in its FOP database. The Department believes that the missing FOP CONNUMs are attributable to a technical mis–coding problem caused partially by the Department's instructions to Lian Li to re–code certain products.[15] In its April 11, 2008, response, Lian Li re–coded its CONNUMs in its revised U.S. sales database but it did not recode the corresponding CONNUMs in its FOP database accordingly. Pursuant to section 776(a) of the Act, the Department has determined preliminarily to apply facts otherwise available to the missing FOP CONNUMs. For purposes of these preliminary results, as facts available, the Department determined FOPs for the re–coded sales based on FOPs for similar CONNUMs reported by Lian Li. *See* ''Lian Li Preliminary Calculation Memo''[16] for further details.

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[14] *See China Kingdom Import & Export Co., Ltd. v. United States*, Consol. Ct. No. 03–00302, Slip Op. 07–135 (CIT September 4, 2007) (''*China Kingdom*'').

[15] Specifically, the Department found that in Lian Li's FOP database, Lian Li reported that binding type and cover material for various products are not consistently reported and may possibly be incorrectly reported. Therefore, in its fifth supplemental questionnaire, dated March 6, 2008, the Department instructed Lian Li to assign a CONNUM to each unique product reported in the section C sales database by specifying its product characteristics in Fields 3.1 through 3.8. *See* The Department's March 6, 2008, letter to Lian Li at 12–14 (''The Department's March 6, 2008, letter'').

[16] *See* the Memorandum to file from Victoria Cho, titled ''Calculation Memorandum, Shanghai Lian Li Paper Products Co. Ltd.; Preliminary Results of Antidumping Investigation of Certain Lined Paper

As stated above, the Department intends to issue an additional questionnaire to Lian Li to seek further clarification of certain information, including Lian Li's missing FOP CONNUMs, after issuance of these preliminary results.

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is Ainformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. *See SAA* at 870; *see also* 19 CFR 351.308 (c) and (d). The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the ''secondary infor*mation to be used has probative value.'' See Id.* The SAA and the Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See SAA* at 870; 19 CFR 351.308 (d). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Ferro Union, Inc. v. United States*, 44 F.Supp. 2d 1310 (CIT 1999); section 776 (c) of the Act.

As stated above, the Department calculated partial AFA based on information reported by the respondents, and did not rely on any secondary information. Therefore, corroboration is not necessary in this review in accordance with section 776(c) of the Act.

Separate Rates

In the *Separate Rates Application and Separate Rates Certification Letter*,[17] the Department notified parties of the recent application process by which exporters and producers may obtain separate–rate status in an NME review. The process requires exporters and producers to submit a separate–rate status certification and/or application. *See also Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005) (''*Policy Bulletin 05.1*''), available at <http://ia.ita.doc.gov>. However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed.

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See* Policy Bulletin 05.1. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *Id.* Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control. *See e.g., Final results of Antidumping Administrative Review: Petroleum Wax Candles from the PRC*, 72 FR 52355 (September 13, 2007).

A. Separate Rate Recipients

1. Wholly Foreign–Owned

The three companies not selected for individual examination in this review (H.F. Plastics/L.T. Plastics; Denmax/Leo's Products; and the Watanabe Group) reported in their separate–rate applications (collectively ''Foreign–owned SR Applicants'') that they are wholly owned by individuals or companies located in a market economy. Therefore, because they are wholly foreign–owned, and we have no evidence indicating that they are under the control of the PRC, a separate–rate analysis is not necessary to determine whether these companies are independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104–05 (December 20, 1999) (where the respondent was wholly foreign–owned and, thus, qualified for a separate rate). Accordingly, we have preliminarily granted a separate rate to these companies.

2. Joint Wholly Chinese–Owned Companies

Lian Li, the mandatory respondent in this review, stated that it is a wholly Chinese–owned company. Therefore, the Department must analyze whether this respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. The evidence provided by Lian Li supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See* Lian Li's letter to the Department entitled, ''Lined Paper Products from China; Section A Response of Shanghai Lian Li Paper Products Co., Ltd.,'' dated December 13, 2007, at Exhibit 1.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes

from People's Republic of China,'' dated September 29, 2008 (''Lian Li Preliminary Calculation Memo'').

[17] *See* The Department's letter to interested parties entitled, ''Certain Lined Paper Products from People's Republic of China: Separate Rates Application and Separate Rates Certification,'' dated November 20, 2007 (''*Separate Rates Application and Separate Rates Certification Letter*'').

independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Lian Li supports a preliminary finding of *de facto* absence of government control based on the following: (1) Lian Li sets its own export prices independent of the government and without the approval of a government authority; (2) Lian Li has authority to negotiate and sign contracts and other agreements; (3) Lian Li has autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of Lian Li's use of export revenue. *See* Lian Li's letter to the Department entitled, ''Lined Paper Products from China; Section A Response of Shanghai Lian Li Paper Products Co., Ltd.,'' dated December 13, 2007, at Exhibit 1.

Therefore, the Department preliminarily finds that Lian Li has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Separate Rate Calculation

This review covers four exporters. As stated previously, the Department selected one exporter, Lian Li, as a mandatory respondent in this review. The remaining three companies (H.F. Plastics/L.T. Plastics; Denmax/Leo's Products; and the Watanabe Group) submitted timely information as requested by the Department and remain subject to this review as cooperative separate–rate respondents.

For the exporters subject to this review that were determined to be eligible for separate–rate status, but were not selected as mandatory respondents (''Separate–Rate Recipients''), the Department normally establishes a weighted–average margin based on an average of the rates it calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA.[18] In this proceeding, there is only one mandatory respondent. Accordingly, for these preliminary results, the rate calculated for Lian Li is applied as the rate for non–selected separate entities. That rate is 217.23 percent. Entities receiving this rate are identified by name in the ''Preliminary Results of Review'' section of this notice.

Date of Sale

Lian Li reported the invoice date as the date of sale because it claims that, for its U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. We have preliminarily determined that the invoice date is the most appropriate date to use as Lian Li's date of sale in accordance with 19 CFR 351.401(i) and the Department's long–standing practice of determining the date of sale.[19]

Normal Value Comparisons

To determine whether sales of lined paper products to the United States by Lian Li were made at less than NV, we compared export price (''EP'') to NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice, pursuant to section 771(35) of the Act.

Export Price

We based U.S. price for Lian Li on EP in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Lian Li incurred foreign inland freight expenses from PRC service providers. We therefore valued these services using Indian surrogate values (*see* ''Factors of Production'' section below for further discussion).

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

The Department will base NV on FOPs because the presence of government controls on various aspects of NME economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, by–products, and packing, with the exception of subject merchandise produced by Sentian and MPF, as noted above.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market–economy country and pays for it in market–economy currency, the Department may value the factor using the actual price paid for the input.[20] Lian Li reported that it did not purchase any inputs from market–economy suppliers for the production of the subject merchandise. *See* Lian Li's January 10, 2008, questionnaire response at 4.

With regard to both the Indian import–based surrogate values and the market–economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized.[21] We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. We are also guided by the statute's

[18] *See PRC Wooden Bedroom Furniture.*

[19] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

[20] *See Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).

[21] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (unchanged in the final results); *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004), and accompanying Issues and Decision Memorandum at Comment 5, and *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. *Id.* Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Lian Li, we calculated NV based on the FOPs reported by Lian Li for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, the Department considers the quality, specificity, and contemporaneity of the data. *See*, *e.g.*, *PRC Lined Paper Investigation Final* and accompanying Issues and Decision Memorandum at Comment 3.

As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Lian Li, *see* the Surrogate Value Memorandum.

Except as noted below, we valued raw material inputs using the surrogate values denominated in Indian rupees (''Rs'') using the Indian Wholesale Price Index (''WPI'') from the *RBI Handbook of Statistics on Indian Economy* as published on the Reserve Bank of India website. *See www.rbi.org.in*, a printout of which is attached to the Surrogate Value Memorandum. We applied a surrogate value using Indian import prices for the POI reported in the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from World Trade Atlas (''WTA'').[22] We excluded from our calculations any imports from NME countries, imports from unspecified countries, and imports from countries which the Department has determined maintain non–specific export subsidies (*i.e.*, Indonesia, South Korea, and Thailand). Where necessary we adjusted surrogate values for inflation, exchange rates, and taxes, and we converted all applicable items to a per–kilogram (''Kg'') basis.

To value electricity, we valued electricity rates using the WPI in the India Source: Reserve Bank of India Bulletin Electricity Source, Table 178, of the Handbook of Statistics on the Indian Economy under the All Commodities Source. We adjusted the value to reflect inflation using the ''Fuel, Power, Light and Lubricants'' inflation index published in the Table 178, a copy of which is attached to the Surrogate Value Memorandum.

To value water, we used the revised Maharashtra Industrial Development Corporation water rates for June 1, 2003 for the Mumbai region, available at http://www.midcindia.com/water supply, adjusted for inflation. *See* Surrogate Value Memorandum.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's web site. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent. *See* Surrogate Value Memorandum at 8.

For factory overhead, selling, general, and administrative expenses (''SG&A''), Lian Li submitted financial information for the year–ended March 31, 2007, for one Indian producer of comparable merchandise: Sundaram Multi Pap Ltd. (''Sundaram''), a producer of comparable merchandise.

Pursuant to 19 CFR 351.408(c)(3), we preliminarily determine that Sundaram's financial statement is the best available information with which to calculate financial ratios, because it is complete, publicly available, and contemporaneous with the POR. Therefore, we used the financial statements to value factory overhead, SG&A, and profit, for these preliminary results.

For packing materials, we used the per–kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC suppliers plant. *See* Surrogate Value Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margin exists:
The weighted–average dumping margins are as follows:

Exporter	Weighted–Average Margin
Shanghai Lian Li Paper Products Co., Ltd.	217.23
Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd.	217.23
Leo's Quality Products Co., Ltd./ Denmax Plastic Stationery Factory	217.23
The Watanabe Group (consisting of the following companies).	
Watanabe Paper Product (Shenghai) Co., Ltd.	217.23
Watanabe Paper Product (Linqing) Co., Ltd..	
Hotrock Stationery (Shenzhen) Co., Ltd..	

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Because, as discussed above, we intend to seek additional information, we will establish the briefing schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of

[22] *See* http://www.gtis.com/wta.htm.

publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the publication of the final results of this review. For assessment purposes, where possible, we calculated importer–specific assessment rates for certain lined paper products from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''PRC–wide'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 258.21 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–23713 Filed 10–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Preliminary Results of the First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products from India with respect to 20 companies. The respondents which the Department selected for individual examination are Kejriwal Paper Limited (''Kejriwal'') and Ria ImpEx Pvt. Ltd. (''Ria'').[1] The respondents which were not selected for individual examination are listed in the ''Preliminary Results of Review'' section of this notice. This is the first administrative review of this order. The period of review (POR) is April 17, 2006, through August 31, 2007.

We preliminarily determine that sales made by Kejriwal have not been made at below normal value (''NV''). Because Ria is a selected mandatory respondent and was not responsive to the Department's requests for information, we have preliminarily assigned to Ria a margin based on adverse facts available (''AFA''). In addition, based on the preliminary results for the respondents selected for individual examination, we have preliminarily determined a weighted-average margin for those companies that are subject to review but not selected for individual examination. *See* the ''Non-Selected Rate'' section below for details. If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* October 7, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or George McMahon, AD/CVD Operations, Office 3, Import Administration-Room 1117, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** an antidumping duty order on certain lined paper products from India. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and*

[1] *See* Memorandum to Melissa Skinner, Director, Office 3, AD/CVD Operations, through James Terpstra, Program Manager, from George McMahon, Case Analyst, Regarding *Antidumping Duty Administrative Review of Certain Lined Paper Products from India*—Selection of Respondents for Individual Review, dated November 13, 2007 (''Respondent Selection Memo'').

Indonesia, 71 FR 56949 (September 28, 2006) (''*Lined Paper Order*''). On September 4, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain lined paper products from India for the period April 17, 2006, through August 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 72 FR 50657 (September 4, 2007). On September 21 and 26, 2007, the Department received timely requests for an administrative review from two respondents, Navneet and Kejriwal, respectively. On September 28, 2007, the Department received a timely request for an administrative review from the Association of American School Paper Suppliers (''AASPS''), the Petitioner,[2] for the following 20 companies: Blue Bird India Ltd.; Creative Divya; Exel India Pvt. Ltd.; FFI International; Global Art India Inc.; Kejriwal Exports; Kejriwal Paper Limited; M/S Super ImpEx.; Magic International; Marigold ExIm Pvt. Ltd.; Marisa International; Navneet Publications (India) Ltd.; Pioneer Stationery Pvt. Ltd.; Rajvansh International; Ria ImpEx Pvt. Ltd.; Riddhi Enterprises; SAB International; TKS Overseas; Unlimited Accessories Worldwide; and V. Joshi Co.

On October 31, 2007, the Department published a notice of initiation of administrative review for those 20 companies.[3] On November 13, 2007, the Department issued a memorandum [4] to interested parties regarding its intention to limit the number of companies examined by using the CBP entry data. In the CBP Memorandum, the Department solicited comments from interested parties regarding the use of CBP data for respondent selection in this review. On November 9 and 20, 2007, the Department received comments regarding respondent selection from Petitioner. On November 19, 2007, the Department received comments regarding respondent selection from Navneet Publications (India) Limited (Navneet). On November 21, 2007, Kejriwal submitted rebuttal comments to Petitioner's comments dated November 9, 2007. *See* the ''Respondent Selection Memo'' for further details.

On December 3, 2007, Petitioner submitted comments with respect to an amendment of model match methodology. *See* below for further details. On January 17, 2008, Petitioner requested an extension for withdrawing its review request. The Department declined Petitioner's request on January 29, 2008.[5]

Based upon our consideration of the resource constraints and other factors including our current and anticipated workload and deadlines coinciding with the segment in question, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on December 17, 2007, we selected the two largest producers/exporters of certain lined paper products from India during the POR (*i.e.*, Kejriwal and Ria) for individual examination, based on the volume information in the CBP data placed on record of this proceeding. *See* the ''Respondent Selection Memo.'' On this same date, we issued the antidumping questionnaire to Kejriwal and Ria.

On December 3, 2007, we received Petitioner's comments regarding amendment of model match methodology by narrowing the paper volume categories from 24 to 7 categories. On December 18, 2007, the Department invited interested parties to this proceeding to comment on the methodology that Petitioner proposed.[6] The Department did not receive comments on this matter from any other interested parties. On February 7, 2008, Petitioner requested that the Department adopt the criteria as outlined in its December 3, 2007 comments and revise the model match criteria for this review. In light of the fact that there were no viable comparison market sales of the subject merchandise reported by the mandatory respondents in this proceeding, the Department does not have a sufficient basis to examine the model match issues raised by Petitioner in the context of this review. Therefore, we did not revise the model match criteria for purposes of this review. *See* the ''Normal Value'' section below for further details.

On January 23, 2008, we received an e-mail from Ria requesting a five-week extension of the deadline to file its response to the Department's questionnaire issued on December 17, 2007. Because this request for extension was not properly filed, in accordance with the Department's filing and service regulations, with the Central Records Unit, the Department issued a letter to Ria on January 23, 2008, instructing Ria to properly file its request and properly serve it on the interested parties. In addition, the Department granted a partial extension until February 6, 2008 for Ria to respond to the Department's questionnaire. However, Ria did not correct its filing, nor did it submit any questionnaire responses to the Department.

On February 6, 2008, Kejriwal filed its sections A, C, and D response to the Department's questionnaire. Petitioner provided its comments on Kejriwal's questionnaire response on February 28, 2008.

On February 7, 2008, Navneet informed the Department that it was unable to submit a voluntary response but indicated that should one of the mandatory respondents not respond, it would request additional time to file its response. On February 13, 2008, Petitioner requested that the Department deny Navneet's extension request for filing its questionnaire response because Navneet is not a mandatory respondent. On February 20, 2008, the Department denied Navneet's extension request because the deadline to file a voluntary questionnaire response had passed.

On March 14, 2008, we issued the first sections A-D supplemental questionnaire to Kejriwal. On April 21, 2008, Kejriwal submitted its response to the Department's first sections A-D supplemental questionnaire, to which Petitioner submitted its comments on May 5, 2008. On May 13 and 28, and July 24, 2008, the Department issued additional section D supplemental questionnaires to Kejriwal, and Kejriwal submitted its responses on May 28, June 17, and August 18, 2008, respectively. On July 11 and August 4, 2008, the Department issued additional sections A and C supplemental questionnaires to Kejriwal, which submitted its responses on July 25 and August 21, 2008, respectively. Petitioner provided further comments and Kejriwal provided its rebuttal comments on sections A, C, and D supplemental questionnaire responses between May 5 and June 9, 2008.

On March 20, 2008, Kejriwal requested an extension for submitting factual information. The Department

[2] The Petitioner made the review request pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 72 FR 61621 (October 31, 2007).

[4] *See* Memorandum to File entitled ''Customs and Border Patrol Data for Selection of Respondents for Individual Review,'' dated November 13, 2007 (''CBP Memorandum'').

[5] *See* Memorandum to File, through James Terpstra, Program Manager, Office 3, Office of AD/CVD Operations, from Cindy Robinson, Case Analyst, RE: Certain Lined Paper Products from India, Subject: Meeting with Petitioner, dated January 29, 2008.

[6] *See* Memorandum to all Interested Parties from George McMahon, Case Analyst, re: Request for Comments Regarding Proposed Modifications to the Model Match Criteria, dated December 18, 2007.

granted Kejriwal's extension request.[7] On April 3, 2008, Kejriwal submitted factual information, which includes a public financial statement of Blue Bird India, Ltd. (''Blue Bird''). On April 10, 2008, Petitioner submitted a letter containing certain factual information [8] which, Petitioners claimed, rebuts and clarifies information submitted by Kejriwal on April 3, 2008. On April 11, 2008, Kejriwal filed a letter requesting that the Department remove Petitioner's April 10, 2008, submission from the record of this administrative review on the grounds that Petitioner's submission did not meet the regulatory requirements of 19 CFR 351.301(c)(1) as it did not rebut, clarify or correct information previously on the record. On April 17, 2008, Petitioner rebutted Kejriwal's April 11, 2008, comments, asserting that the prior case decisions referenced by Kejriwal are not applicable because they refer to non-market economy cases. On April 28, 2008, the Department rejected Petitioner's April 10, 2008, submission because this submission contained new factual information which was untimely submitted and the information presented by Petitioner did not rebut, clarify, or correct the information reported in Blue Bird's financial statement.[9]

[7] *See* the Department's letter to Kejriwal, dated March 20, 2008, extending the due date for interested parties to submit new factual information on the record of this proceeding from March 20, 2008 to April 3, 2008. In its April 3, 2008 submission, Kejriwal states that Petitioner requested a review of Blue Bird and asserts that Blue Bird is an Indian producer of subject merchandise.

[8] Petitioner's submitted information contains the publicly available 2006–2007 financial statement of Navneet, an Indian producer of subject merchandise.

[9] The Department found that Petitioner's submission was filed after the Department's April 3, 2008 deadline for filing factual information. Moreover, it did not meet the regulatory requirements of 19 CFR 351.301(c)(1) because the Navneet financial statement submitted by Petitioner did not rebut, clarify or correct information previously on the record, *i.e.*, the Blue Bird financial statement. Specifically, on page 2 of its April 10, 2008, letter, Petitioner simply states ''{c}oncerning the calculation of Kejriwal's selling expense and profit ratios, we hereby submit rebuttal information in the form of publicly available, and fully audited 2006–2007 financial statement of Navneet Publications (India) Ltd.—an Indian producer of subject merchandise.'' Petitioner has made no statements or arguments as to why Navneet's rather than Blue Bird's selling and profit data should be used by the Department in this review, or why it is relevant to the information placed on the record by Kejriwal on April 13, 2008. Accordingly, the Department rejected Petitioner's April 10, 2008, submission. *See* the Department's April 28, 2008, letter from Melissa G. Skinner, Director, Office 3, AD/CVD Operations, to AASPS; RE: 2006—2007 Administrative Review of the Antidumping Duty Order of Certain Lined Paper from India; SUBJECT: Removal of untimely filed factual information from the Record.

On May 2, 2008, the Department postponed the preliminary results in this review until no later than September 29, 2008. *See Certain Lined Paper Products from India: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 24219 (May 2, 2008).

On September 12, 2008, Petitioner filed pre-preliminary comments, to which Kejriwal submitted its rebuttal comments on September 17, 2008.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single-or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top

computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar® Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Application of Facts Available

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

As discussed in the ''Background'' section above, on December 17, 2007, the Department selected Kejriwal and Ria as the mandatory respondents for this review, and on the same date, the Department issued the antidumping questionnaire to Kejriwal and Ria. *See* the ''Respondent Selection Memo.'' The deadline to respond to the Department's questionnaire was January 23, 2008. On January 23, 2008, the Department received an e-mail from Ria requesting a five-week extension of the deadline to file its response to the Department's questionnaire issued on December 18, 2007. Because this request for extension was not properly filed and served on the interested parties in accordance with the Department's filing and service regulations, the Department on January 23, 2008, issued a letter to Ria and instructed Ria to properly file its extension request and properly serve it on the interested parties. Despite Ria's improper filing of its extension request, the Department granted a two-week extension until February 6, 2008 for Ria to respond to the Department's questionnaire. However, despite the extension, Ria never submitted any questionnaire responses to the Department, nor did it request any further extension. By failing to respond to the Department's requests, Ria withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available for Ria is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). In this case, despite an improperly filed extension request, the Department granted Ria an opportunity

to refile the extension request and a two-week extension to respond to the Department's questionnaire. Ria never responded, refiled, or made additional request for a further extension. We preliminarily find that Ria did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it could have responded to the Department's requests for information, but failed to do so. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to Ria. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 23.17 percent, which is the highest rate on the record of the proceeding which can be corroborated. *Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India (''India Lined Paper Investigation Final'')*, 71 FR 45012 (August 8, 2006). As stated in the *India Lined Paper Investigation Final*, this rate was assigned as AFA to two companies, which failed to cooperate to the best of their ability, and is based on Kejriwal's data submitted in the investigation. *Id.* The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* 19 CFR 351.308(c) and (d); *see also* the SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

To corroborate secondary information, to the extent practicable, the Department normally examines the reliability and relevance of the information to be used. Unlike other types of information such as input costs or selling expenses, however, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 52012 (September 8, 2008) (*''Carbazole Violet Pigment 23 from India''*). *See also Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, and Notice of Intent to Revoke Order in Part,* 69 FR 5949, 5953 (February 9, 2004), unchanged in *Antifriction Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part,* 69 FR 55574, 55576–77 (September 15, 2004).

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (Feb. 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated. *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (CAFC 1997).

None of these unusual circumstances is present here. The Department considers the dumping margin of 23.17 percent relevant for use as AFA for this review because this margin is based on information from the investigation and is within the range of transaction-specific margins calculated for a mandatory respondent in this review.[10] Moreover, there is no information on the record of this review that demonstrates that 23.17 percent is not an appropriate AFA rate for Ria. The Department finds that use of the rate of 23.17 percent as an AFA rate is sufficiently high to ensure that Ria does not benefit from failing to cooperate in our review by refusing to respond to our questionnaire. *See Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part,* 73 FR 15132, 15133 (March 21, 2008). *See also Carbazole Violet Pigment 23 from India.*

As this rate is both reliable and relevant, the Department determines that it has probative value. Accordingly, the Department has determined that the selected rate of 23.17 percent, the highest rate from any segment of this proceeding that can be corroborated, is in accordance with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

[10] The dumping margin of 23.17 percent is the AFA rate for Navneet in the original investigation, which was based on a calculated rate for Kejriwal. *See* the Memorandum to File through James Terpstra, Program Manager, from Cindy Lai Robinson, Case Analyst, entitled ''Analysis Memorandum for Kejriwal Paper, Re: Preliminary Results of Antidumping Duty Administrative Review of Certain Lined Paper Products from India,'' dated September 29, 2008.

Comparisons to Normal Value

To determine whether sales of certain lined paper products by Kejriwal to the United States were made at less than NV, we compared export price (''EP'') to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Export Price

For all U.S. sales made by Kejriwal, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise warranted based on the facts of record.

We based EP on packed prices to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for movement expenses, where appropriate, foreign inland freight from plant/warehouse to the port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight, U.S. marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to customers, U.S. duty and certain bank charges. In addition, we deducted billing adjustments from EP, where appropriate.

Normal Value

A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Kejriwal's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Section 773(a)(1)(C)(i) of the Act applies to the Department's determination of NV if the foreign like product is not sold (or offered for sale) for consumption in the exporting country. When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a particular third country market may be utilized if: (1) The prices in such market are representative; (2) the aggregate quantity of the foreign like product sold by the producer or exporter in the third country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (3) the Department does not determine that a particular market situation in the third country market prevents a proper comparison with the U.S. price.

Kejriwal reported that it made no sales to the home market and no sales to a third country. *See* Kejriwal's Section A Response, dated February 6, 2008, at A–2 and A–3; *see also* Kejriwal's supplemental questionnaire response at 15, dated April 21, 2008. Therefore, for Kejriwal, we used constructed value (''CV'') as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

B. Level of Trade

Kejriwal reported sales only to unaffiliated distributors in the U.S. market, and no sales to either the home or third country markets. In the U.S. market, it reported only one level of trade. The selling functions, customer category, and the level of selling expenses for each type of sale was consistent for all distributors in the United States. A level-of-trade adjustment is not practicable in this review, as we do not have the information necessary with respect to the level of trade at which CV selling expenses and profit were determined.

C. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we based Kejriwal's NV on CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of Kejriwal's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A''), profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the CV information provided by Kejriwal in its section D response. We recalculated Kejriwal's financial expense ratio to include newsprint SG&A reclassified as cost of newsprint revenue in the cost of goods sold denominator. Because Kejriwal does not have Indian sales of the foreign like product or third country sales, the Department does not have comparison market selling expenses or profit to use in its calculations, as directed by section 773(e) of the Act. As an alternative, the Department has used as selling expenses and profit for Kejriwal, data from the March 31, 2007 financial statements of Blue Bird. Blue Bird sells merchandise within the same general category of products as the foreign like product in the Indian market. *See* Memorandum from Robert Greger to Neal Halper, Director, Office of Accounting, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Kejriwal Paper Limited, dated September 29, 2008 (''COP/CV Memo'').

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Non-Selected Rate

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. However, the Department normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act instructs that the Department is not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based on total facts available, the Department may use ''any reasonable method'' for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possible method is ''averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

In this review, the margin calculated for Kejriwal is *de minimis* and the margin applied to Ria is based on AFA. Thus, in this segment of the proceeding, we have assigned only *de minimis* and rates based entirely on AFA. Based on the facts of this case, the Department determines that a reasonable method for determining the margin for the non-selected companies in this review is the average of the margins, other than those which are zero, *de minimis*, or based on total facts available, that we found for the most recent period in which there were such margins. In this case, the most recently completed segment is the original investigation. In the investigation, only one rate that we calculated was not zero, *de minimis*, or

based on total facts available: the margin we calculated for Kejriwal was 3.91 percent (*see India Lined Paper Investigation Final*). This margin was also assigned as the all-others rate. While the statute contemplates that the Department may use an average of the zero, *de minimis*, or facts-available rates determined in an investigation where such rates are the only rates determined, in this review, the Department has additional information that would not be available in an investigation involving only *de minimis*/zero and AFA rates. Specifically, in addition to the option of using an average of the rates in this review, the Department can use the above *de minimis* rate calculated in the most recently completed segment of the proceeding. Consistent with the Department's decision in *AFBs*,[11] we have determined that it is appropriate in this review to use the calculated above *de minimis* rate from the investigation, as there is no reason to find that it is not reasonably reflective of potential dumping margins for the non-selected companies.

We note that in the investigation, Navneet, a non-selected company in this review, was assigned a company-specific rate of 23.17 percent based on AFA for its failure to cooperate to the best of its ability. In this review, however, there is no basis for finding Navneet uncooperative. As stated above, Navneet and the other 17 companies are non-selected companies under this review. The Department determines to use, as the non-selected rate, a calculated rate which does not rely on zero, *de minimis*, or facts-available margins from the investigation. Therefore, for purposes of these preliminary results, the 18 remaining non-selected companies subject to this review will receive the rate of 3.91 percent calculated during the investigation.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

[11] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823 (September 11, 2008), and the accompanying Issues and Decision Memorandum at Comment 6 (''*AFBs*''). *See also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52017 (September 8, 2008).

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period April 17, 2006, through August 31, 2007, as follows:

Manufacturer/exporter	Weighted average margin (percent)
Kejriwal Paper Limited	0.44 (*de minimis*)
Ria ImpEx Pvt. Ltd.	23.17

Review-Specific Average Rate Applicable to the Non-Selected Companies Subject to This Review: [12]

Blue Bird India Ltd.	3.91
Creative Divya	3.91
Exel India Pvt. Ltd.	3.91
FFI International	3.91
Global Art India Inc.	3.91
Kejriwal Exports	3.91
M/S Super ImpEx	3.91
Magic International	3.91
Marigold ExIm Pvt. Ltd.	3.91
Marisa International	3.91
Navneet Publications (India) Ltd.	3.91
Pioneer Stationery Pvt. Ltd.	3.91
Rajvansh International	3.91
Riddhi Enterprises	3.91
SAB International	3.91
TKS Overseas	3.91
Unlimited Accessories Worldwide	3.91
V. Joshi Co.	3.91

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

[12] This rate is based on the weighted average of the margins calculated during the investigation (which is also the rate calculated for Kejriwal in the investigation). *See* the ''Non-Selected Rate'' section above.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Kejriwal, because it reported the entered value for some of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. For Kejriwal's U.S. sales reported without entered values, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For all other companies [13] subject to this review which were not selected for individual examination, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies as described in the ''Non-Selected Rate'' section above.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for

[13] As stated above, Ria will receive an AFA rate of 23.17 percent.

which the assessment rate is *de minimis*. *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.91 percent, the all-others rate made effective by the investigation. *See Lined Paper Order*, 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–23704 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 0809301287–81291–01]

Solicitation of Applications for the Minority Business Enterprise Center (MBEC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with 15 U.S.C. Section 1512 and Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Minority Business Enterprise Center (MBEC) in Houston, TX. The MBEC operates through the use of business consultants and provides a range of business consulting and technical assistance services directly to eligible minority-owned businesses in the Houston-Sugar Land-Baytown, Texas Metropolitan Statistical Area (MSA). Responsibility for ensuring that applications in response to this competitive solicitation are complete and received by MBDA on time is the sole responsibility of the applicant. Applications submitted must be to operate a MBEC and to provide business consultation services to eligible clients. Applications that do not meet these requirements will be rejected. This is not a grant program to help start or to further an individual business.

DATES: The closing date for receipt of applications is November 7, 2008 at 5 p.m. Eastern Standard Time (EST). Completed applications must be received by MBDA at the address below for paper submissions or at *http://www.Grants.gov* for electronic submissions. The due date and time is the same for electronic submissions as it is for paper submissions. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is forty-five (45) days from the closing date for receipt of applications. MBDA anticipates that one award under this notice will be made with a start date of January 1, 2009.

Pre-Application Conference: In connection with this solicitation, a pre-application teleconference will be held on October 21, 2008 at 1 p.m. Eastern Daylight Time (EDT). Participants must register at least 24 hours in advance of the teleconference and may participate in person or by telephone. Please visit the MBDA Internet Portal at *http://www.mbda.gov* (MBDA Portal) or contact an MBDA representative listed below for registration instructions.

ADDRESSES: *(1a) Paper Submission—If Mailed:* If the application is sent by postal mail or overnight delivery service by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications. Complete application packages must be mailed to: Office of Business Development—MBEC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are advised that MBDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service. Department of Commerce delivery policies for overnight delivery services require all packages to be sent to the address above.

(1b) Paper Submission—If Hand-Delivered: If the application is hand-delivered by the applicant or by its representative, one (1) signed original plus two (2) copies of the application

must be delivered. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications. Complete application packages must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—MBEC Program (extension 1940), HCHB—Room 1874, Entrance #10, 15th Street, NW. (between Pennsylvania and Constitution Avenues), Washington, DC. MBDA will not accept applications that are submitted by the deadline, but that are rejected due to the applicant's failure to adhere to Department of Commerce protocol for hand-deliveries.

(2) *Electronic Submission:* Applicants are encouraged to submit their proposal electronically at *http://www.Grants.gov*. Electronic submissions should be made in accordance with the instructions available at Grants.gov (see *http://www.grants.gov/forapplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as, in some cases, the process for completing an online application may require 3–5 working days.

FOR FURTHER INFORMATION CONTACT: For further information or for an application package, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov*. Paper applications may also be obtained by contacting the MBDA Office of Business Development or the MBDA National Enterprise Center (NEC) in the region in which the MBEC will be located (see below Agency Contacts). In addition, Standard Forms (SF) may be obtained by accessing *http://www.whitehouse.gov/omb/grants* or *http://www.grants.gov* and Department of Commerce (CD) forms may be accessed at *http://www.doc.gov/forms*.

Agency Contacts:

1. MBDA Office of Business Development, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Contact: Efrain Gonzalez, Chief, 202–482–1940.

2. Dallas National Enterprise Center (DNEC), 1100 Commerce Street, Room 726, Dallas, Texas, 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. Contact: John F. Iglehart, Regional Director, 214–767–8001.

SUPPLEMENTARY INFORMATION:

Background: The MBEC Program is a key component of MBDA's overall minority business development assistance program and promotes the growth and competitiveness of eligible minority-owned businesses. MBEC operators leverage project staff and professional consultants to provide a wide-range of direct business assistance services to eligible minority-owned firms, including but not limited to initial consultations and assessments, business technical assistance, and access to federal and non-federal procurement and financing opportunities. MBDA currently funds a network of 33 MBEC projects located throughout the United States. Pursuant to this notice, competitive applications for new awards are being solicited for the MBEC project identified below.

Pursuant to a grant competition held in 2006, MBDA made a three (3) year award for the operation of the Houston MBEC project for the period of January 1, 2007–December 31, 2009. *See* 71 FR 42352. However, the incumbent operator of the Houston MBEC intends to terminate the current award for the Houston MBEC project as of December 31, 2008. The purpose of this competition is to find an operator for the Houston MBEC project as MBDA intends to maintain delivery of program services in this geographical area. The new award for the Houston MBEC project is expected to be made with a three (3) year award of January 1, 2009–December 31, 2011.

Location and Geographical Service Area: MBDA is soliciting competitive applications from organizations to operate an MBEC in the following location and geographical service area:

Name of MBEC	Location of MBEC	MBEC geographical service area **
Houston MBEC	Houston, TX	Houston-Sugar Land-Baytown, TX MSA **.

** Metropolitan Statistical Area, please see OMB Bulletin No.08–01, Update of Statistical Area Definitions and Guidance on Their Uses (November 20, 2007) at *http://www.whitehouse.gov/omb/bulletins*.

Electronic Access: A link to the full text of the Announcement of Federal Funding Opportunity (FFO) for this solicitation may be accessed at: *http://www.Grants.gov*, *http://www.mbda.gov*, or by contacting the appropriate MBDA representative identified above. The FFO contains a full and complete description of the requirements under the MBEC Program. In order to receive proper consideration, applicants must comply with all information and requirements contained in the FFO. Applicants will be able to access, download and submit electronic grant applications for the MBEC Program through *http://www.Grants.gov*. MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as in some cases the process for completing an online application may require additional time (e.g., 3–5 working days). The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered.

Funding Priorities: Preference may be given during the selection process to applications which address the following MBDA funding priorities:

(a) Proposals that include performance goals that exceed by 10% or more the minimum performance goal requirements in the FFO;

(b) Applicants who demonstrate an exceptional ability to identify and work towards the elimination of barriers which limit the access of minority businesses to markets and capital;

(c) Applicants who demonstrate an exceptional ability to identify and work with minority firms seeking to obtain large-scale contracts and/or insertion into supply chains with institutional customers;

(d) Proposals that take a regional approach in providing services to eligible clients; or

(e) Proposals from applicants with pre-existing or established operations in the identified geographic service area.

Funding Availability: MBDA anticipates that approximately $291,000 will be available in each of Fiscal Years (FYs) 2009–2011 to fund the financial assistance award for the Houston MBEC project. The total award period for the project is anticipated to be three (3) years and to cover the period January 1, 2009–December 31, 2011. The anticipated level of Federal funding and the minimum non-federal matching share for the Houston MBEC project for each funding period is set forth in the below table (the actual award amount

may vary depending on the availability of appropriated funds and on MBDA and Department of Commerce priorities).

Project name	January 1, 2009 through December 31, 2009			January 1, 2010 through December 31, 2010			January 1, 2011 through December 31, 2011		
	Total cost ($)	Federal share ($)	Non-Federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-Federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-Federal share ($) (10% min.)
Houston MBEC	$363,750	$291,000	$72,500	$363,750	$291,000	$72,500	$363,750	$291,000	$72,500

Applicants must submit project plans and budgets for each of the three (3) funding periods under this award (January 1–December 31, 2009, January 1–December 31, 2010 and January 1–December 31, 2011). Projects will initially be funded for the first funding period and will not have to compete for funding in the second and third funding periods. However, operators that fail to achieve a ''Satisfactory'' or better performance rating for the current funding period may be denied funding for subsequent funding periods. Recommendations for funding for subsequent funding periods are generally evaluated by MBDA based on a ''Satisfactory'' or better mid-year program performance rating (i.e., January 1, 20xx–June 30, 20xx) and/or a combination of a mid-year and cumulative third-quarter (i.e., January 1, 20xx–September 30, 20xx) ''Satisfactory'' or better performance rating for the current funding period. In making such funding recommendations, MBDA and the Department of Commerce will consider the facts and circumstances of each case, such as but not limited to market conditions, most recent performance of the operator and other mitigating circumstances.

Funding for the program listed in this notice is contingent upon the availability of FY 2009 appropriations. MBDA issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 2638, ''Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009,'' Public Law 110–329. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other Department of Commerce or MBDA priorities. All funding periods under the award are subject to the availability of funds to support the continuation of the project. Publication of this FFO does not obligate the Department of Commerce or MBDA to award any specific cooperative agreement or to obligate all or any part of available funds.

Authority: 15 U.S.C. Section 1512 and Executive Order 11625.

Catalog of Federal Domestic Assistance (CFDA): 11.800, Minority Business Enterprise Centers.

Eligibility: For-profit entities (including but not limited to sole-proprietorships, partnerships, and corporations), non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate an MBEC.

Program Description: MBDA is soliciting competitive applications from organizations to operate a Minority Business Enterprise Center (MBEC) (formerly known as Minority Business Development Centers). The MBEC will operate through the use of trained professional business consultants who will assist eligible minority entrepreneurs through direct client engagements. Entrepreneurs eligible for assistance under the MBEC Program are: African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Native Americans (including Alaska Natives, Alaska Native Corporations and tribal entities), Eskimos, Asian Indians and Hasidic Jews. No service may be denied to any member of the eligible groups listed above.

The MBEC Program generally requires project staff to provide standardized business assistance services directly to ''eligible minority owned firms,'' with an emphasis on those firms with $500,000 or more in annual revenues and/or those eligible firms with ''rapid growth potential'' (''Strategic Growth Initiative'' or ''SGI'' firms); to develop and maintain a network of strategic partnerships; to provide collaborative consulting services with MBDA and other MBDA funded programs and strategic partners; and to provide referral services (as necessary) for client transactions. MBEC operators will assist eligible minority-owned firms in accessing federal and non-federal contracting and financing opportunities that result in demonstrable client outcomes.

The MBEC Program incorporates an entrepreneurial approach to building market stability and improving the quality of client services. This entrepreneurial strategy expands the reach of the MBECs by requiring project operators to develop and build upon strategic alliances with public and private sector partners as a means of serving minority-owned firms within each MBEC's geographical service area. The MBEC Program is also designed to effectively leverage MBDA resources, including but not limited to: MBDA Office of Business Development and MBDA National Enterprise Centers; MBDA's Business Internet Portal; and MBDA's nationwide network of MBECs, Native American Business Enterprise Centers (NABECs) and Minority Business Opportunity Centers (MBOCs). MBEC operators are also required to attend a variety of MBDA training programs designed to increase operational efficiencies and the provision of value-added client services.

MBEC operators are generally required to provide the following four client services: (1) Client Assessment—this is a standardized service activity that includes identifying the client's immediate and long-term needs and establishes a projected growth track; (2) Strategic Business Consulting—this involves providing intensive business consulting services that can be delivered as personalized consulting or group consulting; (3) Access to Capital—this assistance is designed to secure the financial capital necessary for client growth, and (4) Access to Markets—this involves assisting clients to identify and access opportunities for increased sales and revenues.

Please refer to the FFO pertaining to this competitive solicitation for a full and complete description of the application and programmatic requirements under the MBEC Program.

Match Requirements: The MBEC Program requires a minimum non-federal cost share of 20%, which must be reflected in the proposed project budget. Non-federal cost share is the portion of the project cost not borne by the Federal Government. Applicants

must satisfy the non-federal cost sharing requirements in one or more of the following four means or any combination thereof: (1) Client fees; (2) applicant cash contributions; (3) applicant in-kind (i.e., non-cash) contributions; or (4) third-party in-kind contributions. The MBEC is required to charge client fees for services rendered and such fees must be used by the operator towards meeting the non-federal cost share requirements under the award. Applicants will be awarded up to five bonus points to the extent that the proposed project budget includes a non-federal cost share contribution, measured as a percentage of the overall project budget, exceeding 20% (see Evaluation Criterion below).

Evaluation Criterion: Proposals will be evaluated and one applicant may be selected based on the below evaluation criterion. The maximum total number of points that an application may receive is 105, including the bonus points for exceeding the minimum required non-federal cost sharing, except when oral presentations are made by applicants. If oral presentations are made (see below: Oral Presentation—Optional), the maximum total of points that can be earned is 115. The number of points assigned to each evaluation criterion will be determined on a competitive basis by the MBDA review panel based on the quality of the application with respect to each evaluation criterion.

1. Applicant Capability (40 Points)

Proposals will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, proposals will be evaluated as follows:

(a) *Community*—Experience in and knowledge of the minority community, minority business sector, and strategies for enhancing its growth and expansion; particular emphasis shall be on expanding SGI firms. Consideration will be given as to whether the applicant has a physical presence in the geographic service area at the time of its application (4 points);

(b) *Business Consulting*—Experience in and knowledge of business consulting with respect to minority firms, with emphasis on SGI firms in the geographic service area (5 points);

(c) *Financing*—Experience in and knowledge of the preparation and formulation of successful financial transactions, with an emphasis on the geographic service area (5 points);

(d) *Procurements and Contracting*—Experience in and knowledge of the public and private sector contracting opportunities for minority businesses, as well as demonstrated expertise in assisting clients into supply chains (5 points);

(e) *Financing Networks*—Resources and professional relationships within the corporate, banking and investment community that may be beneficial to minority-owned firms (5 points);

(f) *Establishment of a Self-Sustainable Service Model*—Summary plan to establish a self-sustainable model for continued services to the MBE communities beyond the MBDA award period (3 points);

(g) *MBE Advocacy*—Experience and expertise in advocating on behalf of minority communities and minority businesses, both as to specific transactions in which a minority business seeks to engage and as to broad market advocacy for the benefit of the minority community at large (3 points); and

(h) *Key Staff*—Assessment of the qualifications, experience and proposed role of staff that will operate the MBEC. In particular, an assessment will be made to determine whether proposed key staff possess the expertise in utilizing information systems and the ability to successfully deliver program services. At a minimum the applicant must identify a proposed project director. (10 points).

2. Resources (20 Points)

The applicant's proposal will be evaluated as followed:

(a) *Resources*—Resources (not included as part of the non-federal cost share) that will be used in implementing the program, including but not limited to existing prior and/or current data lists that will serve in fostering immediate success for the MBEC (8 points);

(b) *Location*—Assessment of the applicant's strategic rationale for the proposed physical location of the MBEC. Applicant is encouraged to establish a location for the MBEC that is in a building which is separate and apart from any of the applicant's existing offices in the geographic service area (2 points);

(c) *Partners*—How the applicant plans to establish and maintain the network of strategic partners and the manner in which these partners will support the MBEC in meeting program performance goals (5 points); and

(d) *Equipment*—How the applicant plans to satisfy the MBEC information technology requirements, including computer hardware, software requirements and network map (5 points).

3. Techniques and Methodologies (20 Points)

The applicant's proposal will be evaluated as follows:

(a) *Performance Measures*—For each funding period, the manner in which the applicant relates each performance measure to the financial information and market resources available in the geographic service area (including existing client list); how the applicant will create MBEC brand recognition (marketing plan); and how the applicant will satisfy program performance goals. In particular, emphasis may be placed on the manner in which the applicant matches MBEC performance goals with client service hours and how it accounts for existing market conditions in its strategy to achieve such goals (10 points);

(b) *Start-up Phase*—How the applicant will commence MBEC operations within the initial 30-day period. The MBEC shall have thirty (30) days to become fully operational after an award is made (3 points); and

(c) *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently staff time will be used to achieve the work requirements, particularly with respect to periods beyond the start-up phase (7 points).

4. Proposed Budget and Budget Narrative (20 Points)

The applicant's proposal will be evaluated as follows:

(a) *Reasonableness, Allowability and Allocability of Proposed Program Costs.* All of the proposed program costs expenditures should be discussed and the budget line-item narrative must match the proposed budget. Fringe benefits and other percentage item calculations should match the proposed budget line-item and narrative (5 points);

(b) *Non-Federal Cost Share.* The required 20% non-Federal share must be adequately addressed and properly documented, including but not limited to how client fees (if proposed) will be used by the applicant in meeting the non-federal cost-share (5 points); and

(c) *Performance-Based Budgeting.* The extent to which the line-item budget and budget narrative relate to the accomplishment of the MBEC work requirements and performance measures (i.e., performance-based budgeting) (10 points).

Bonus for Non-Federal Cost Sharing (maximum of 5 points): Proposals with non-federal cost sharing exceeding 20% of the total project costs will be awarded bonus points on the following scale:

more than 20%—less than 25% = 1 point; 25% or more—less than 30% = 2 points; 30% or more—less than 35% = 3 points; 35% or more—less than 40% = 4 points; and 40% or more = 5 points. Non-federal cost sharing of at least 20% is required under the MBEC Program. Non-federal cost sharing is the portion of the total project cost not borne by the Federal Government and may be met by the applicant in any one or more of the following four means (or a combination thereof): (1) client fees; (2) cash contributions; (3) non-cash applicant contributions; or, (4) third party in-kind contributions.

5. Oral Presentation—Optional (10 Points)

Oral presentations are optional and held *only* when requested by MBDA. This action may be initiated for the top two (2) ranked applications. Oral presentations will be used to establish a final evaluation and ranking.

The applicant's presentation will be evaluated as to the extent to which the presentation demonstrates:

(a) How the applicant will effectively and efficiently assist MBDA in the accomplishment of its mission (2 points);

(b) Business operating priorities designed to manage a successful MBEC (2 points);

(c) A management philosophy that achieves an effective balance between micromanagement and complete autonomy for its Project Director (2 points);

(d) Robust search criteria for the identification of a Project Director (1 point);

(e) Effective employee recruitment and retention policies and procedures (1 point); and

(f) A competitive and innovative approach to exceeding performance requirements (2 points).

Review and Selection Process

1. Initial Screening

Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. An application will be considered non-responsive and will not be evaluated by the review panel if it is received after the closing date for receipt of applications, the applicant fails to submit an original, signed Form SF–424 by the application closing date (paper applications only), or the application does not provide for the operation of an MBEC. Other application deficiencies may be accounted for through point deductions during panel review.

2. Panel Review

Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The review panel will consist of at least 3 persons, all of whom will be full-time federal employees and at least one of whom will be an MBDA employee, who will review the applications for a specified project based on the above evaluation criterion. Each reviewer shall evaluate and provide a score for each proposal. Each project review panel (through the panel Chairperson) shall provide the MBDA National Director (Recommending Official) with a ranking of the applications based on the average of the reviewers' scores and shall also provide a recommendation regarding funding of the highest scoring application.

3. Oral Presentation—Upon MBDA Request

MBDA may invite the two (2) top-ranked applicants to develop and provide an oral presentation. If an oral presentation is requested, the affected applicants will receive a formal communication (via standard mail, e-mail or fax) from MBDA indicating the time and date for the presentation. In-person presentations are not mandatory but are encouraged; telephonic presentations are acceptable. Applicants will be asked to submit a PowerPoint presentation (or equivalent) to MBDA that addresses the oral presentation criteria set forth above. The presentation must be submitted at least 24 hours before the scheduled date and time of the presentation. The presentation will be made to the MBDA National Director (or his/her designee) and up to three senior MBDA staff who did not serve on the original review panel. The oral panel members may ask follow-up questions after the presentation. MBDA will provide the teleconference dial-in number and pass code. Each applicant will present to MBDA staff only; competitors are not permitted to listen (and/or watch) other presentations.

All costs pertaining to this presentation shall be borne by the applicant. MBEC award funds may *not* be used as a reimbursement for this presentation. MBDA will not accept any requests or petitions for reimbursement.

The oral panel members shall score each presentation in accordance with the oral presentation criterion provided above. An average score shall be compiled and added to the score of the original panel review.

4. Final Recommendation

The MBDA National Director makes the final recommendation to the Grants Officer regarding the funding of one application under this competitive solicitation. MBDA expects to recommend for funding the highest ranking application, as evaluated and recommended by the review panel and taking into account oral presentations (as applicable). However, the MBDA National Director may not make any selection, or he/she may select an application out of rank order for the following reasons:

(a) A determination that an application better addresses one or more of the funding priorities for this competition. The National Director (or his/her designee) reserves the right to conduct one or more site visits (subject to the availability of funding), in order to make a better assessment of an applicant's capability to achieve the funding priorities; or

(b) The availability of MBDA funding.

Prior to making a final recommendation to the Grants Officer, MBDA may request that the apparent winner of the competition provide written clarifications (as necessary) regarding its application.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: Funding for the program listed in this notice is contingent upon the availability of FY 2009 appropriations. MBDA issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 2638, ''Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009,'' Public Law 110–329. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if the MBEC Program fails to receive funding or is cancelled because of Department of Commerce or MBDA priorities. All funding periods under the award are subject to the availability of funds to support the continuation of the project. Publication of this notice does not obligate MBDA or the Department of Commerce to award any specific project or to obligate any available funds.

Universal Identifier: Applicants should be aware that they will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. *See* the June 27, 2003 **Federal Register** notice (68 FR 38402) for additional information.

Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by accessing the Grants.gov Web site at *http://www.Grants.gov.*

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Executive Order 12866: This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, or contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: October 2, 2008.

Edith J. McCloud,

Associate Director for Management, Minority Business Development Agency.

[FR Doc. E8–23739 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 0809261277–81278–01 I.D. GF001]

Cooperative Institute for Satellite Climate Studies

AGENCY: National Environmental Satellite Data and Information Service Program Office (NESDISPO), National Environmental Satellite Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: NOAA National Environmental Satellite Data and Information Services (NESDIS) invites applications for a Cooperative Institute (CI) that will focus on (1) Climate and satellite research and applications, (2) climate and satellite observations and monitoring, and (3) climate research and modeling. Through this competition, NOAA intends to establish competitively a new CI according to the policy and procedures described in NOAA Administrative Order 216?107 and the Cooperative Institute Interim Handbook both available at *http://www.nrc.noaa.gov/ci.* The proposed CI should be composed of two or more member institutions (e.g., multiple universities). At least one research institution should be in Maryland, Washington DC or the adjacent states (Delaware, Pennsylvania, West Virginia and Virginia). At least two research institutions should be in North Carolina or the adjacent states (Virginia, Tennessee, South Carolina and Georgia), with a presence in Asheville, North Carolina. NOAA has identified three research themes that will address specific needs within the NOAA Mission Support Satellite Service program and the NOAA Climate Goal that would benefit from collaborations with the CI. The CI should possess outstanding capabilities to work in the three research themes summarized below, as well as possess the capability to conduct outreach and education activities in support of these research themes. *I. Climate and Satellite Research and Applications:* Research conducted under this theme is associated with the development of new and innovative uses of non-NOAA satellite assets that can ultimately be transitioned into NOAA operations to support climate information needs. This theme also includes performing research and development aimed at improving the utilization of long time series of satellite measurements that will offer NOAA scientists a homogeneous record of satellite radiances. *II. Climate and Satellite Observations and Monitoring:* Research conducted under this theme involves (1) Designing indices and applications that incorporate satellite observations to detect, monitor and investigate climatic changes and their impacts on coastal and open ocean ecosystems, (2) identifying and meeting the satellite climate needs of a wide variety of users, including research, business and industry, and government and private sector users, and (3) contributing significantly to climate reanalysis projects when satellite data is a key input. *III. Climate Research and Modeling:* Research conducted under this theme is focused on improving climate forecasts on mesoscale, regional and global scales when satellite data is a key input, and developing regional ecosystem models that can incorporate satellite observations to predict the impact of climate change on these ecosystems, particularly those located in the Mid-Atlantic region. The CI is also expected to play a significant role in National Centers for Environmental Prediction (NCEP) Climate Test Bed projects when satellite data is a key input. This announcement provides requirements for the proposed CI and includes details for the technical program, evaluation criteria, and competitive selection procedures. Applicants should review the NOAA CI Policy and CI Interim Handbook (both available at *http://www.nrc.noaa.gov/ci*) prior to preparing a proposal for this announcement.

DATES: Proposals must be received by NESDIS no later than January 5, 2009 5 p.m., E.T. Proposals submitted after that date will not be considered.

ADDRESSES: The standard application package is available at *http://www.grants.gov.* For applicants without Internet access, an application package may be received by contacting Ingrid Guch, NOAA/NESDIS, 5200 Auth Road, Room 701, Camp Springs, Maryland 20746. Applicants are strongly encouraged to apply online through the Grants.gov website. Paper submissons are only acceptable only if internet access is not available. Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks, involving multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide that you intend to apply, even if you are not yet ready to submit your proposal. If an applicant has problems

downloading the application package from Grants.gov, contact Grants.gov Customer Support at (800)518–4726 or *support@grants.gov.* For non-Windows computer systems, please see *http://www.grants.gov/MacSupport* for information on how to download and submit an application through Grants.gov. If a hard copy application is submitted, please include an original of two unbound copies of the proposal. Paper submissions should be submitted to Mrs. Guch at the above-listed address.

FOR FURTHER INFORMATION CONTACT: For a copy of the Federal Funding Opportunity announcement and/or application package, please access grants.gov; the NOAA Cooperative Institute Web site (*http://www.nrc.noaa.gov/ci*) or contact Ingrid Guch, NOAA/NESDIS; 5200 Auth Road, Room 701; Camp Springs, Maryland 20746, or by phone at (301) 763–8282 ext. 152, or fax to (301) 763–8108, or via internet at *ingrid.guch@noaa.gov.*

SUPPLEMENTARY INFORMATION: One of NOAA's strategic goals is to ''understand and describe climate variability and change to enhance society's ability to plan and respond.'' The Satellite Climate Studies CI will provide strong and sustained academic partners towards realizing this goal. It is essential for NOAA federal scientists to substantially collaborate with outstanding researchers in academia in order to produce climate information and services that are based on satellite data and knowledge from many disciplines (physics, chemistry, biology, geography, earth science, oceanography, meteorology and sociology, etc.). The sustained nature of a Satellite Climate Studies CI (5–10 years) will provide significant opportunity to enhance NOAA's operational decision support tools to provide climate services for national socioeconomic benefits, a key goal area of research specified by NOAA's 5-year Research Plan and 20-year Research Vision. Additionally, the Satellite Climate Studies CI will also serve another important function in support of NOAA's ongoing research: Educating, training and sustaining a world class workforce. These goals will be accomplished through NOAA-academia projects in which the research institution brings a strong heritage in satellite remote sensing and climate applications. *CI Concept/Program Background:* A CI is a NOAA-supported, non-Federal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. The CI is established at research institutions that also have a strong education program with established graduate degree programs in NOAA-related sciences. The CI provides significant coordination of resources among all non-government partners and promotes the involvement of students and post-doctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties. NOAA establishes a new CI competitively when it identifies a need to sponsor a long-term (5–10 years) collaborative partnership with one or more outstanding non-Federal, non-profit research institutions. For NOAA, the purpose of this long-term collaborative partnership is to promote research, education, training, and outreach aligned with the NOAA mission; to obtain research capabilities that do not exist internally and/or to expand research capacity in NOAA-related sciences to:

—Conduct collaborative, long-term research that involves NOAA scientists and those at the research institution(s) from one or more scientific disciplines of interest to NOAA;
—Utilize the scientific, education, and outreach expertise at the research institution(s) that, depending on NOAA's research needs, may or may not be located near a NOAA facility;
—Support student participation in NOAA-related research studies; and
—Strengthen or expand NOAA-related research capabilities and capacity at the research institution(s) that complements and contributes to the NOAA ability to reach its mission goals. A CI will consist of one or more research institutions that demonstrate outstanding performance within one or more established research programs in NOAA-related sciences. These institutions may include Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI. CIs, conduct research under approved scientific research themes (see Section I.B of the Full Funding Opportunity announcement) and Tasks (additional tasks can be proposed by the CI):

i. Task I activities are related to the management of the CI, as well as general education and outreach activities. This task also includes support of postdoctoral and visiting scientists conducting activities within the research themes of the CI that are approved by the CI Director, in consultation with NOAA, and are relevant to NOAA and the CI mission goals.

ii. Task II activities usually involve on-going direct collaboration with NOAA scientists. This collaboration typically is fostered by the collocation of Federal and CI employees.

iii. Task III activities require minimal collaboration with NOAA scientists and may include research funded by other NOAA competitive grant programs.

Electronic Access: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov Web site at *http://www.grants.gov.* The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

Statutory Authority: 15 U.S.C. 313, 49 U.S.C. 44720(b), 15 U.S.C. 2901, 15 U.S.C. 1540, 33 U.S.C. 883d, 118 Stat. 71 CFDA: 11.440, Environmental Sciences, Applications, Data, and Education

Funding Availability: NOAA expects that approximately $13M will be available for the CI In the first year of the award. The Task I budget should not exceed $400,000. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. Funding for subsequent years is expected to be constant throughout the period and will depend on the quality of the research, the satisfactory progress in achieving the stated goals described in the proposal, continued relevance to program objectives, and the availability of funding.

Eligibility: Eligibility is limited to non-Federal public and private non-profit universities, colleges and research institutions that offer accredited graduate level degree-granting programs in NOAA-related sciences, as described in the CI Interim Handbook located at *http://www.nrc.noaa.gov/ci/.*

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of the CI commitment under the NOAA standard evaluation criteria for overall qualifications of applicants. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of indirect

costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff, graduate students, visiting scientists, or postdoctoral scientists.

Evaluation and Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects: Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are provided to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant. i. Importance and/or relevance and applicability of proposed project to the program goals (25 percent): This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities.—Does the proposal include research goals and projects that address the critical issues identified in the NOAA 5-year Research Plan, the NOAA Strategic Plan, and the priorities described in the program priorities section (see section I.B. of the Full Funding Opportunity announcement).—Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?—Will most of the staff at the CI be located near one of two NOAA facilities, the National Center for Weather and Climate Prediction in Riverdale Park, Maryland, or the National Climactic Data Center in Asheville North Carolina, to enhance collaborations with NOAA? Examples include (1) Academic institution of higher learning in Asheville North Carolina metropolitan area and/or Washington DC metropolitan area; and/or (2) Office space located in Asheville North Carolina metropolitan area and/or Washington DC metropolitan area hosting at least 20 consortium personnel; and/or (3) Willingness to allow at least 20 students or professors to work at the NOAA site in Asheville North Carolina metropolitan area and/or Washington DC metropolitan area. ii. Technical/scientific merit (30 percent): This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.—Does the project description include a summary of clearly stated goals to be achieved during the five year period that reflect the NOAA strategic plan and goals? —Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI? iii. Overall qualifications of applicants (30 percent): This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.—If the institution(s) and/or PIs have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA and/or NOAA scientists on research projects?—Is there nationally and/or internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/interdisciplinary research described in the proposal?—Is there a well-developed business plan that includes fiscal and human resource management, as well as strategic planning and accountability?—Are there any unique capabilities in a mission-critical area of research for NOAA?—Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by the amount of the cost sharing contribution? iv. Project costs (5 percent): The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame. v.Outreach and education (10 percent): NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. —Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourages student participation in NOAA-related research studies?

Review and Selection Process: An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above-listed evaluation criteria by an independent peer review panel. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, each expert will submit an individual review and there will be no consensus opinion. The merit reviewers ratings are used to produce a rank order of the proposals. The Selecting Official selects proposals after considering the peer reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors.

Selection Factors for Projects: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based on one or more of the following factors: 1. Availability of funding 2. Balance and distribution of funds a. By research area b. By project type c. By type of institutions d. By type of partners e. Geographically 3. Duplication of other projects funded or considered for funding by NOAA/federal agencies. 4. Program priorities and policy factors. 5. Applicant prior award performance. 6. Partnerships with/Participation of targeted groups. 7. Adequacy of information necessary for NOAA staff to make a National Environmental Policy Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the NOAA Grants Officer.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://*

ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required.

Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Mary E. Kicza,

Assistant Adminstrator for Satellite and Information Services.

[FR Doc. E8–23826 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 0809181228–81232–01; I.D. GF001]

Cooperative Institute To Investigate the Use of Satellite Applications for Regional and Global-Scale Forecast Systems

AGENCY: OAR Cooperative Institutes Program Office (CIPO), Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: NOAA Office of Oceans and Atmospheric Research (OAR) invites applications for a Cooperative Institute (CI) that will collaborate with NOAA scientists to improve weather forecast and warning accuracy; contribute to improvements in water resource forecasting capabilities; provide integrated weather information to meet future aviation and surface transportation needs; advance satellite sensor technology; develop high-performance computing, visualization, and scientific workstation technologies; and enhance environmental literacy to improve understanding. The CI would also conduct research needed to develop multiscale (global to local) data assimilation techniques with a strong satellite data emphasis, and provide the scientific expertise and the necessary computing infrastructure to help NOAA move forward on these issues. Through this competition, NOAA intends to establish competitively a new CI according to the policy and procedures described in NOAA Administrative Order 216–107 and the Cooperative Institute Interim Handbook both available at *http://www.nrc.noaa.gov/ci/*. The proposed CI should be within daily commuting distance of NOAA facilities in Boulder and Fort Collins, Colorado. NOAA has identified five research themes that will address identified needs within the NOAA Weather and Water Goal that would benefit from collaborations with the CI.

I. Satellite algorithm development, training and education. Research conducted under this theme is associated with development of satellite-based algorithms for weather forecasting, with emphasis on regional and mesoscale meteorological phenomenon. This work includes applications of basic satellite products such as feature track winds, thermodynamic retrievals, sea surface temperature, etc., in combination with model analyses and forecasts, as well as in situ and other remote sensing observations. Applications can be for current or future satellites. Also under this theme, satellite and related training material will be developed and delivered to a wide variety of users, with emphasis on operational forecasters. A variety of techniques can be used, including distance learning methods, Web-based demonstration projects and instructor-led training.

II. Regional to Global Scale Modeling Systems. Research conducted under this theme is associated with the improvement of weather/climate models (minutes to months) that simulate and predict changes in the Earth system. Topics include atmospheric and ocean dynamics, radiative forcing, clouds and moist convection, land surface modeling, hydrology, and coupled modeling of the earth system.

III. Data Assimilation. Research conducted under this theme will develop and improve techniques to assimilate environmental observations, including satellite, terrestrial, oceanic, and biological observations, to produce the best estimate of the environmental state at the time of the observations for use in analysis, modeling, and prediction activities associated with weather/climate predications (minutes to months) and analysis.

IV. Climate-Weather Processes. Research conducted under this theme will focus on using numerical models and environmental data, including satellite observations, to understand processes that are important to creating environmental changes on weather and

short-term climate timescales (minutes to months) and the two-way interactions between weather systems and regional climate.

V. Data Distribution. Research conducted under this theme will focus on identifying effective and efficient methods of quickly distributing and displaying very large sets of environmental and model data using data networks, using web map services, data compression algorithms, and other techniques.

This announcement provides requirements for the proposed CI and includes details for the technical program, evaluation criteria, and competitive selection procedures. Applicants should review CI Interim Handbook (available at *http://www.nrc.noaa.gov/ci*) prior to preparing a proposal for this announcement.

DATES: Proposals must be received by OAR no later than January 5, 2009 5 p.m., E.T. Proposals submitted after that date will not be considered.

ADDRESSES: Applicants are strongly encouraged to apply online through the Grants.Gov Web site *http://www.grants.gov.* Paper submissions are acceptable only if internet access is not available. Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks, involving multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide that you intend to apply, even if you are not yet ready to submit your proposal. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Customer Support at (800)518–4726 or *support@grants.gov.* For non-Windows computer systems, please see *http://www.grants.gov/MacSupport* for information on how to download and submit an application through Grants.gov. If a hard copy application is submitted, the original and two unbound copies of the proposal should be included. Paper submissions should be sent to: Mr. Philip L. Hoffman, 1315 East West Highway, Room 11308, Silver Spring, Maryland 20910; telephone (301) 734–1096. No e-mail or facsimile proposal submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: For a copy of the Federal Funding Opportunity announcement and/or an application package, please access Grants.gov, the NOAA Cooperative Institute Web site (*www.nrc.noaa.gov/ci*) or contact Mr. Philip L. Hoffman, 1315 East West Highway, Room 11308, Silver Spring, Maryland 20910; telephone (301) 734–1096; e-mail: *Philip.Hoffman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this announcement is to invite the submission of proposals to establish a CI which will collaborate with NOAA scientists to improve weather forecast and warning accuracy; contribute to improvements in water resource forecasting capabilities; provide integrated weather information to meet future aviation and surface transportation needs; advance satellite sensor technology; develop high-performance computing, visualization, and scientific workstation technologies; and enhance environmental literacy to improve understanding. This CI will give NOAA the benefit of working with complementary capabilities at one or more research institutions that contribute to meteorological research and forecasting missions.

CI Concept/Program Background: A CI is a NOAA-supported, non-Federal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission ''to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs.'' CIs are established at research institutions that also have a strong education program with established graduate degree programs in NOAA-related sciences. The CI provides significant coordination of resources among all non-government partners and promotes the involvement of students and post-doctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties. NOAA establishes a new CI competitively when it identifies a need to sponsor a long-term (5–10 years) collaborative partnership with one or more outstanding non-Federal, non-profit research institutions. For NOAA, the purpose of this long-term collaborative partnership is to promote research, education, training, and outreach aligned with NOAA's mission; to obtain research capabilities that do not exist internally; and/or to expand research capacity in NOAA-related sciences to:

- Conduct collaborative, long-term research that involves NOAA scientists and those at the research institution(s) from one or more scientific disciplines of interest to NOAA;
- Utilize the scientific, education, and outreach expertise at the research institution(s) that, depending on NOAA's research needs, may or may not be located near a NOAA facility;
- Support student participation in NOAA-related research studies; and
- Strengthen or expand NOAA-related research capabilities and capacity at the research institution(s) that complements and contributes to NOAA's ability to reach its mission goals.

A CI will consist of one or more research institutions that demonstrate outstanding performance within one or more established research programs in NOAA-related sciences. These institutions may include Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI. CIs conduct research under approved scientific research themes (see Section I.B of the full funding opportunity announcement) and Tasks (additional tasks can be proposed by the CI):

i. Task I. Task I activities are related to the management of the CI, as well as general education and outreach activities. This task also includes support of postdoctoral and visiting scientists conducting activities within the research themes of the CI that are approved by the CI Director, in consultation with NOAA, and are relevant to NOAA and the CI's mission goals.

ii. Task II. Task II activities usually involve on-going direct collaboration with NOAA scientists. This collaboration typically is fostered by the collocation of Federal and CI employees.

iii. Task III. Task III activities require minimal collaboration with NOAA scientists and may include research funded by other NOAA competitive grant programs.

Electronic Access: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov Web site at *http://www.grants.gov*. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

Statutory Authority:

- 15 U.S.C. 1540
- 33 U.S.C. 883 (d)
- 15 U.S.C. 313
- 49 U.S.C. 44720 (b)
- 15 U.S.C. 5501 *et seq.*
- 15 U.S.C. 2901 *et seq.*
- 118 Stat. 71 (Jan. 23, 2004)

CFDA: 11.432, OAR Joint and Cooperative Institutes

Funding Availability: The award period will be 5 years, and may be renewed for an additional 5 years based

on the outcome of a CI review in the fourth year. All funding is contingent upon the availability of Federal appropriations. NOAA expects that approximately $9M will be available for the CI in the first year of the award. The Task I budget should not exceed $230,000. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. Funding for subsequent years is expected to increase by 6% per year throughout the period and will depend on the quality of the research, the satisfactory progress in achieving the stated goals described in the proposal, continued relevance to program objectives, and the availability of funding.

Eligibility: Eligibility is limited to non-Federal public and private non-profit universities, colleges and research institutions that offer accredited graduate level degree-granting programs in NOAA-related sciences.

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of the CI's commitment under NOAA's standard evaluation criteria for overall qualifications of applicants. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of indirect costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff, graduate students, visiting scientists, or postdoctoral scientists.

Evaluation and Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects: Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are provided to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant.

i. Importance and/or relevance and applicability of proposed project to the program goals (25 percent): This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities.

- Does the proposal include research goals and projects that address the critical issues identified in NOAA's 5-year Research Plan, NOAA's Strategic Plan, and the priorities described in the program priorities (see Section I.B. of the full funding opportunity announcement)?
- Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?
- Does the proposal meet the geographical constraints described in the announcement?

ii. Technical/scientific merit (30 percent): This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

- Does the project description include a summary of clearly stated goals to be achieved during the five year period that reflect NOAA's strategic plan and goals?
- Does the project description include innovative approaches to meeting the undersea technology development, exploration and research goals of the proposal?
- Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI?

iii. Overall qualifications of applicants (30 percent): This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

- If the institution(s) and/or Principal Investigators have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA and/or NOAA scientists on research projects?
- Is there nationally and/or internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/interdisciplinary research described in the proposal?
- Is there a well-developed business plan that includes fiscal and human resource management, as well as strategic planning and accountability?
- Are there any unique capabilities in a mission-critical area of research for NOAA?
- Does the CI possess the necessary undersea technical expertise and resources, and/or provide access to the technical resources outlined in the proposal?
- Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by the amount of the cost sharing contribution?

iv. Project costs (5 percent): The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

v. Outreach and education (10 percent): NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

- Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourages student participation in NOAA-related research studies?

Review and Selection Process: An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above-listed evaluation criteria by an independent peer review panel. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, each expert will submit an individual review and there will be no consensus opinion. The merit reviewers' ratings are used to produce a rank order of the proposals. The Selecting Official selects proposals after considering the peer reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors.

Selection Factors for Projects: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

i. Availability of funding.

ii. Balance/distribution of funds:

a. Geographically.

b. By type of institutions.

c. By type of partners.

d. By research areas.

e. By project types.

iii. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.

iv. Program priorities and policy factors.

v. Applicant's prior award performance.

vi. Partnerships and/or participation of targeted groups.

vii. Adequacy of information necessary for NOAA staff to make a National Environmental Policy Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 1, 2008.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E8–23661 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XJ28

Endangered Species; File No. 13330

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Southeast Fisheries Science Center (SEFSC), National Marine Fisheries Service (NMFS), 75 Virginia Beach Drive Miami, Florida 33149, has been issued a permit to take smalltooth sawfish (*Pristis pectinata*) for purposes of scientific research.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 2, 2008, notice was published in the **Federal Register** (73 FR 17955) that a request for scientific research permit to take smalltooth sawfish had been submitted by the above–named institution. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The research will be conducted each year over the course of a five-year permit in coastal waters of Florida. Up to 45 smalltooth sawfish will be taken annually using nets and hook and line gear. Researchers will conduct a variety

sampling and tagging activities in order to collect biological and ecological information on these species that will help efforts to conserve them. Up to 2 loggerhead (*Caretta caretta*) and one green (*Chelonia mydas*) or hawksbill (*Eretmochelys imbricata*) or leatherback (*Dermochelys coriacea*) or Kemp's ridley (*Lepidochelys kempii*) sea turtle, and one American crocodile (*Crocodylus acutus*) could be lethally taken during the smalltooth sawfish research.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 1, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–23741 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XK94

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held October 27–30, 2008.

ADDRESSES: The meetings will be held at the Renaissance Riverview Plaza, 64 S. Water St., Mobile, AL 36602.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Interim Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, October 29, 2008

1 p.m. - The Council meeting will begin with a review of the agenda and minutes.

From 1:15 p.m. - 1:30 p.m., the Council will approve the 2009 Committee Rosters.

From 1:30 p.m. - 3:30 p.m., the Council will receive public testimony on exempted fishing permits (EFPs), if any; the Final Aquaculture Fishery Management Plan (FMP); and hold an Open Public Comment Period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

From 3:30 p.m. - 5:30 p.m., the Council will review and discuss reports from the previous two days' committee meetings as follows: Joint Reef Fish/Mackerel/Red Drum, Ad Hoc Allocation, and Reef Fish Management.

The following will be, in part, CLOSED SESSIONS - Joint Scientific and Statistical Committee (SSC) Selection/Administrative Policy and Budget/Personnel.

Thursday, October 30, 2008

From 8:30 a.m. - 10:30 a.m., the Council will continue to review and discuss reports from the committee meetings as follows: Joint SSC Selection/Administrative Policy; Budget/Personnel; Operator Permits; Law Enforcement; Outreach & Education (O&E); Habitat Protection; Migratory Species; and Marine Reserves.

From 10:30 a.m. - 11 a.m., the Council will receive a report from the SSC of its Review of the 5-year Research Plan.

From 11 a.m. - 12 p.m., other business items will follow. The Council will conclude its meeting at approximately 12 p.m.

Committees

Monday, October 27, 2008

1 p.m. - 3 p.m. - The Ad Hoc Allocation Committee will meet to discuss Draft Allocation Principles.

3 p.m. - 4 p.m. - The Operator Permits Committee will meet to discuss a Draft Scoping Document for Generic Operator Permit Amendment.

4 p.m. - 4:30 p.m. - The Law Enforcement Committee will meet to discuss the 2009–12 Strategic Plan and the 2009–10 Operations Plan.

4:30 p.m. - 5 p.m. - The Outreach and Education Committee will meet to discuss proposed agenda for the O&E Advisory Panel (AP) Meeting.

5 p.m. - 7 p.m. - There will be an Open Public Question and Answer Session and Public Hearing on the Aquaculture FMP.

Tuesday, October 28, 2008

8:30 a.m. - 11 a.m. - The Reef Fish Management Committee will meet to discuss the Ad Hoc Recreational Red Snapper AP Recommendations, review an Update on Endangered Species Act (ESA) Biological Opinion on sea turtle bycatch, consider red snapper recreational seasons and establishing a Vessel Monitoring System AP.

11 a.m. - 12 p.m. - The Budget/Personnel Committee will meet to discuss the status of 2008 budget; FY 2009 budget; and will have a CLOSED SESSION to discuss the Executive Director search status.

1:30 p.m. - 3:30 p.m. - The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss the Final Aquaculture FMP.

3:30 p.m. - 5 p.m. - The Joint SSC Selection Committee/Administrative Policy Committee will meet to Review the SSC's role and appointment process and in a CLOSED SESSION review the SSC membership.

Wednesday, October 29, 2008

8:30 a.m. - 9:30 a.m. - The Migratory Species Committee will receive a presentation on Amendment 3 to the HMS FMP (Small Coastal Sharks) and Amendment 4 to the Highly Migratory Species (HMS) FMP (Caribbean Issues).

9:30 a.m. - 10:30 a.m. - The Marine Reserves Committee will receive a presentation on marine protected area (MPA) Framework and Proposed Nomination Process and may comment on an advanced notice of proposed rule (ANPR) for consultations under the National Marine Sanctuaries Act (NMSA).

10:30 a.m. - 11:30 a.m. - The Habitat Protection Committee will receive a presentation on Amendment 1 to the HMS EFH FMP.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be

adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 2, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23627 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XK93

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Golden Tilefish Limited Access Privilege (LAPP) Exploratory Workgroup in North Charleston, SC.

DATES: The meeting will take place October 28–30, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the South Atlantic Fishery Management Council Office, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29406.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC, 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Workgroup meeting will take place from 1 p.m. - 5 p.m. on October 28, 2008, 8:30 a.m. until 5 p.m. on October 29, 2008, and from 8:30 a.m. - 12 noon on October 30, 2008.

The Council recently formed a Golden Tilefish LAPP Exploratory Workgroup to investigate the possible use of LAPPs or other programs for the commercial golden tilefish fishery. The Workgroup consists of fishermen involved in this deepwater fishery from the South Atlantic region. During this initial meeting of the Workgroup, members will receive a presentation on LAPPs, discuss problems and issues currently affecting the golden tilefish fishery, and possible solutions.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodation

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 2, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23626 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XK95

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a rescheduled South Atlantic Fishery Management Council's South Atlantic Habitat and Ecosystem Internet Map Server (IMS) Refinement Workshop.

SUMMARY: The South Atlantic Fishery Management Council (Council) has rescheduled a South Atlantic Habitat and Ecosystem IMS Refinement Workshop, in St. Petersburg, FL.

DATES: The workshop has been rescheduled for November 6–7, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The workshop will be held at the Florida Fish and Wildlife Research Institute, 100 Eighth Avenue, S.E., St. Petersburg, FL; telephone: (727) 896–8626.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The rescheduled IMS Workshop will take place from 8:30 a.m. - 5 p.m. on November 6, 2008, and from 8:30 a.m. - 12 noon on November 7, 2008.

The Workshop is designed to continue the refinement of the Council's Internet Map Server (IMS) as a support tool for ecosystem-based management. Invited workshop participants will review the present structure of the IMS and future capabilities, identify Geographic Information Systems (GIS) needs supporting management, research, and regional collaborations and provide recommendations. Participants will also identify additional data and GIS for possible inclusion in the IMS and provide recommendations for enhancing and refining the functional capabilities of the IMS to better support local, state, and other regional habitat and ecosystem GIS needs.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 2, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23628 Filed 10–6ndash;08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 0809261279–81280–01; I.D. GF001]

A North Atlantic Regional Cooperative Institute

AGENCY: OAR Cooperative Institutes Program Office (CIPO), Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: The NOAA National Marine Fisheries Service (NMFS) and the NOAA Office of Ocean and Atmospheric Research (OAR) invite applications for the establishment of a cooperative institute (CI) that will focus on the themes of (1) Ecosystem Forecasting, (2) Ecosystem Monitoring, (3) Ecosystem Management, Protection and Restoration of Resources, (4) Sustained Ocean Observations and (5) Climate Research. These 5 themes will be supported by a variety of research activities, which may include:

- Research on the linkages among productivity, fish and fisheries, pollution, climate change, and ecosystem health;
- Research to improve the integration and availability of ocean observations across spatial scales, from global to regional and local;
- Research to distinguish marine resource changes due to human impacts from those resulting from natural forcing, including climate variability and change;
- Development and application of new tools and approaches for monitoring ecosystem health and forecasting ecosystem change'
- Examination of the expected increases in socioeconomic benefits accrued from a better understanding of the effects of climate change, food webs, physical-chemical coupling, and ecosystem production dynamics'
- Collaborative research and education leading to closer linkages between scientific assessments and management actions.

This research, conducted within the New England and the Mid-Atlantic regions, is described in the full Federal Funding Opportunity notice.

Through this new CI, NOAA also seeks to augment its existing North East Regional climate research with an expanded fisheries forecasting capability, and to develop an integrated capability to research emerging issues from an ecosystem perspective. The CI may consist of one or more research institutions with expertise and capabilities in the NOAA priority areas that contribute to the areas of research described as research themes above. Through this competition, NOAA intends to establish competitively a new CI according to the policy and procedures described in NOAA Administrative Order 216–107 and the Cooperative Institute Interim Handbook both available at *http://www.nrc.noaa.gov/ci/*. This announcement provides requirements for the proposed CI and includes details for the technical program, evaluation criteria, and competitive selection procedures. Applicants should review the CI Interim Handbook prior to preparing a proposal for this announcement.

DATES: Proposals must be received by OAR no later than January 5, 2009 5 p.m., E.T. Proposals submitted after that date will not be considered.

ADDRESSES: Applicants are strongly encouraged to apply online through the Grants.Gov Web site *http://www.grants.gov*. Paper submissions are acceptable only if internet access is not available. Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks, involving multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide that you intend to apply, even if you are not yet ready to submit your proposal. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Customer Support at (800) 518–4726 or *support@grants.gov*. For non-Windows computer systems, please see *http://www.grants.gov/MacSupport* for information on how to download and submit an application through Grants.gov. If a hard copy application is submitted, the original and two unbound copies of the proposal should be included. Paper submissions should be sent to: Mr. Philip L. Hoffman, 1315 East West Highway, Room 11308, Silver Spring, Maryland 20910; telephone (301)734–1096. No email or facsimile proposal submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: For a copy of the Federal Funding Opportunity announcement and/or an application package, please access Grants.gov, the NOAA Cooperative Institute Web site (*http://www.nrc.noaa.gov/ci*) or contact Mr. Philip L. Hoffman, 1315 East West Highway, Room 11308, Silver Spring, Maryland 20910; telephone (301)734–1096; *e-mail: Philip.Hoffman@noaa.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this announcement is to invite the submission of proposals to establish a North Atlantic Regional CI which will operate along the eastern U.S. Continental Shelf frontier to conduct exploration, research, and technology development, and to provide details on the application, review, and selection process.

CI Concept/Program Background: A CI is a NOAA-supported, non-Federal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission ''to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs.'' CIs are established at research institutions that also have a strong education program with established graduate degree programs in NOAA-related sciences. The CI provides significant coordination of resources among all non-government partners and promotes the involvement of students and post-doctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties. NOAA establishes a new CI competitively when it identifies a need to sponsor a long-term (5–10 years) collaborative partnership with one or more outstanding non-Federal, non-profit research institutions. For NOAA, the purpose of this long-term collaborative partnership is to promote research, education, training, and outreach aligned with NOAA's mission; to obtain research capabilities that do not exist internally; and/or to expand research capacity in NOAA-related sciences. More specifically, the new CI will perform the following types of research activities:

- Research on the linkages among productivity, fish and fisheries, pollution, climate change, and ecosystem health;
- Research to improve the integration and availability of ocean observations

across spatial scales, from global to regional and local;

• Research to distinguish marine resource changes due to human impacts from those resulting from natural forcing, including climate variability and change;

• Development and application of new tools and approaches for monitoring ecosystem health and forecasting ecosystem change;

• Examination of the expected increases in socioeconomic benefits accrued from a better understanding of the effects of climate change, food webs, physical-chemical coupling, and ecosystem production dynamics;

• Collaborative research and education leading to closer linkages between scientific assessments and management actions.

A CI will consist of one or more research institutions that demonstrate outstanding performance within one or more established research programs in NOAA-related sciences. These institutions may include Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI. CIs conduct research under approved scientific research themes (see Section I.B of the full funding opportunity announcement) and Tasks (additional tasks can be proposed by the CI).

i. Task I activities are related to the management of the CI, as well as general education and outreach activities. This task also includes support of postdoctoral and visiting scientists conducting activities within the research themes of the CI that are approved by the CI Director, in consultation with NOAA, and are relevant to NOAA and the CI's mission goals.

ii. Task II activities usually involve on-going direct collaboration with NOAA scientists. This collaboration typically is fostered by the collocation of Federal and CI employees.

iii. Task III activities require minimal collaboration with NOAA scientists and may include research funded by other NOAA competitive grant programs.

Electronic Access: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov Web site at *http://www.grants.gov*. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

Statutory Authority: 15 U.S.C. 1540, 33 U.S.C. 883(d), 15 U.S.C. 313, 15 U.S.C. 2901 *et seq.*, 118 Stat. 71 (Jan. 23, 2004).

CFDA: 11.432, OAR Joint and Cooperative Institutes.

Funding Availability: The award period will be 5 years, and may be renewed for an additional 5 years based on the outcome of a CI review in the fourth year. All funding is contingent upon the availability of Federal appropriations. NOAA expects that approximately $7M will be available for the CI in the first year of the award. The Task I budget should not exceed $350,000. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. Funding for subsequent years is expected to be constant throughout the period and will depend on the quality of the research, the satisfactory progress in achieving the stated goals described in the proposal, continued relevance to program objectives, and the availability of funding.

Eligibility: Eligibility is limited to non-Federal public and private non-profit universities, colleges and research institutions that offer accredited graduate level degree-granting programs in NOAA-related sciences.

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of the CI's commitment under NOAA's standard evaluation criteria for overall qualifications of applicants. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of indirect costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff, graduate students, visiting scientists, or postdoctoral scientists.

Evaluation and Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects: Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are provided to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant.

i. Importance and/or relevance and applicability of proposed project to the program goals (25 percent): This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities.

• Does the proposal include research goals and projects that address the critical issues identified in NOAA's 5-year Research Plan, NOAA's Strategic Plan, and the priorities described in the program priorities (see Section I.B. of the full funding opportunity announcement)?

• Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?

• Does the proposal meet the geographical constraints described in the announcement?

ii. Technical/scientific merit (30 percent): This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

• Does the project description include a summary of clearly stated goals to be achieved during the five year period that reflect NOAA's strategic plan and goals?

• Does the project description include innovative approaches to meeting the undersea technology development, exploration and research goals of the proposal?

• Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI?

iii. Overall qualifications of applicants (30 percent): This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

• If the institution(s) and/or Principal Investigators have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA and/or NOAA scientists on research projects?

• Is there nationally and/or internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/

interdisciplinary research described in the proposal?

• Is there a well-developed business plan that includes fiscal and human resource management, as well as strategic planning and accountability?

• Are there any unique capabilities in a mission-critical area of research for NOAA?

• Does the CI possess the necessary undersea technical expertise and resources, and/or provide access to the technical resources outlined in the proposal?

• Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by the amount of the cost sharing contribution?

iv. Project costs (5 percent): The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

v. Outreach and education (10 percent): NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

• Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourages student participation in NOAA-related research studies.

Review and Selection Process: An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above-listed evaluation criteria by an independent peer review panel. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, each expert will submit an individual review and there will be no consensus opinion. The merit reviewers' ratings are used to produce a rank order of the proposals. The Selecting Official selects proposals after considering the peer reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors.

Selection Factors For Projects: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

i. Availability of funding.

ii. Balance/distribution of funds:

a. Geographically.

b. By type of institutions.

c. By type of partners.

d. By research areas.

e. By project types.

iii. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.

iv. Program priorities and policy factors.

v. Applicant's prior award performance.

vi. Partnerships and/or participation of targeted groups.

vii. Adequacy of information necessary for NOAA staff to make a National Environmental Policy Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required.

Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements

for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 1, 2008.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E8–23654 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Statutory Invention Registration

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the extension of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 8, 2008.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov*. Include ''0651–0036 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert A. Clarke, Deputy Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7735; or by e-mail at *Robert.Clarke@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

A statutory invention registration is not a patent. It has the defensive attributes of a patent but does not have the enforceable attributes of a patent. In other words, a person occasionally invents something solely for personal use (not for production or sale) and does not want to go through the effort and expense of obtaining a patent on the invention. At the same time, the inventor wants to prevent someone else from later obtaining a patent on a like invention. In that situation, the inventor can register a statutory invention and have it published. Once published, it cannot be claimed by another person.

35 U.S.C. 157 authorizes the United States Patent and Trademark Office (USPTO) to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, providing the patentee meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the USPTO, and pays all application, publication and other processing fees.

The USPTO administers 35 U.S.C. 157 through 37 CFR 1.293–1.297. Under these rules, an applicant for an original patent may request, at any time during the pendency of the application, that the specifications and drawings be published as a statutory invention registration. Any request for a statutory invention registration may be examined to determine if all the conditions have been met, if the subject matter of the application is appropriate for publication, and if the requirements for publication are met.

The public may petition the USPTO to review rejection decisions within one month or other such time as is set forth in the decision refusing publication. The public may also petition the USPTO to withdraw a request to publish a statutory invention registration prior to the date of the notice of the intent to publish.

If the request for a statutory invention registration is approved, a notice to that effect will be published in the *Official Gazette* of the USPTO. Each statutory invention registration that is published will include a statement relating to the attributes of a statutory invention registration.

The public uses form PTO/SB/94, Request for Statutory Invention Registration, to request and authorize publication of a regularly-filed patent application as a statutory invention registration, to waive the right to receive a United States patent on the same invention claimed in the identified patent application, to agree that the waiver will be effective upon publication of the statutory invention registration, and to state that the identified patent application complies with the requirements for printing. No forms are associated with the petition for a review of the refusal to publish a statutory invention registration or the petition to withdraw the request for publication of a statutory invention registration.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when the applicant or agent files a statutory invention registration with the USPTO.

III. Data

OMB Number: 0651–0036.

Form Number(s): PTO/SB/94.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 8 responses per year.

Estimated Time per Response: The USPTO estimates that it will take approximately 24 minutes (0.40 hours) each to gather, prepare, and submit the request for statutory invention registration, the petition to review the rejection decision, and the petition to withdraw the publication request, depending upon the complexity of the situation. This collection contains one form and two petitions.

Estimated Total Annual Respondent Burden Hours: 4 hours each per year.

Estimated Total Annual Respondent Cost Burden: $1,240. Using the professional hourly rate of $310 per hour for associate attorneys in private firms, the USPTO estimates $1,240 per year for salary costs associated with respondents.

Item	Estimated time for response (min)	Estimated annual responses	Estimated annual burden hours
Statutory Invention Registration	24	5	2
Petition to Review Rejection Decision	24	1	1

Item	Estimated time for response (min)	Estimated annual responses	Estimated annual burden hours
Petition to Withdraw Publication Request	24	2	1
Total		8	4

Estimated Total Annual Non-Hour Respondent Cost Burden: $8,166. There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have postage costs and filing fees.

The public may submit the paper forms and petitions in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first-class postage cost for a mailed submission will be 75 cents, and that customers filing the documents associated with this information collection may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 8 submissions per year may be mailed to the USPTO at an average first-class postage rate of 75 cents, for a total postage cost of $6.

There is annual non-hour cost burden in the way of filing fees associated with this collection. The estimated filing costs for this collection of $7,760 are calculated in the accompanying chart.

Item	Responses (a)	Filing fee ($) (b)	Total non-hour cost burden (a) × (b)
Statutory Invention Registration (requested prior to mailing of first office action, 37 CFR 1.17(n))	2	$920.00	$1,840.00
Statutory Invention Registration (requested after mailing of first office action, 37 CFR 1.17(o))	3	1,840.00	5,520.00
Petition to Review Rejection Decision (37 CFR 1.295)	1	200.00	200.00
Petition to Withdraw Publication Request (37 CFR 1.296)	1	0.00	0.00
Petition to Withdraw Publication Request on or after Date of Notice of Intent to Publish (37 CFR 1.296)	1	200.00	200.00
Total	8		7,760.00

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of postage costs and filing fees amounts to $7,766.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: September 30, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–23677 Filed 10–6–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of IS–GPS–200, IS–GPS–705, IS–GPS–800 Interface Control Working Group (ICWG) Meeting

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems Wing will be hosting an Interface Control Working Group (ICWG) meeting for document/s IS–GPS–200 (NAVSTAR GPS Space Segment/Navigation User Interfaces), IS–GPS–705 (NAVSTAR GPS Space Segment/User Segment L5 Interfaces), and IS–GPS–800 (NAVSTAR GPS Space Segment/User Segment L1C Interfaces). The meeting will address PIRN/IRN changes and contractor redlines to the documents.

The ICWG is open to the general public. For those who would like to attend and participate in this ICWG meeting, you are requested to register to attend the meeting no later than 4 November 08. Please send the registration to *thomas.davis.ctr@losangeles.af.mil* and provide your name, organization, telephone number, address, and country of citizenship. More information, including Comments Resolution Matrixes (CRMs) and track changed documents, will be posted at: *http://www.losangeles.af.mil/library/factsheets/factsheet.asp?id=9364*.

Please send all CRM comments to Thomas Davis by 28 Oct 08.

DATES: November 18 2008: IS–GPS–800, from 8 a.m. to 4 p.m., and November 19 2008: IS–GPS–200, IS–GPS–705, from 8 a.m. to 4 p.m.

Location: The Hacienda Hotel, 525 N Sepulveda Blvd, El Segundo, CA 90245, (310) 615–0015.

FOR FURTHER INFORMATION CONTACT: Thomas Davis, 1–310–416–8440, *thomas.davis.ctr@losangeles.af.mil*, or

Captain Neal Roach 1–310–653–3771, *neal.roach@losangeles.af.mil*.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–23675 Filed 10–6–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 733–010]

Eric Jacobson; Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

October 1, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 733–010.

c. *Date filed:* April 9, 2008.

d. *Applicant:* Eric Jacobson.

e. *Name of Project:* Ouray Hydroelectric Project.

f. *Location:* The project is located on the Uncompahgre River in Ouray County, Colorado. The project occupies 4.25 acres of land within the Uncompahgre National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Eric Jacobson, P.O. Box 745, Telluride, Colorado 81435; (970) 369–4662.

i. *FERC Contact:* Steve Hocking, (202) 502–8753 or *steve.hocking@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is December 1, 2008; reply comments are due January 14, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is ready for environmental analysis.

l. *Project Description:* The project consists of the following existing facilities: (1) A 0.48-acre reservoir formed by a 70-foot-long masonry gravity dam with a maximum height of 72 feet consisting of a 51-foot-long non-overflow section and a 19-foot-wide spillway; (2) a 6,130-foot-long pressure pipeline; (3) a 32- by 65-foot powerhouse containing three turbine-generating units with a total authorized capacity of 632 kilowatts (kW); and (4) appurtenant facilities. The applicant proposes to upgrade turbine-generator unit No. 1 and add a fourth turbine-generator unit to increase the project's total installed capacity to 775 kW.

m. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
All stakeholders: interventions, protests, recommendations, terms and conditions, and fishway prescriptions due.	December 1, 2008.
All stakeholders: reply comments due.	January 14, 2009.
FERC issues single environmental assess (EA) (no draft EA).	March 2, 2009.
All stakeholders: EA comments due.	April 1, 2009.
All stakeholders: modified terms and conditions due.	June 1, 2009.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3)

evidence of waiver of water quality certification.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23619 Filed 10–6–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

July 3, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–106–000.

Applicants: Wisconsin Power and Light Company, Alliant Energy Resources, Inc., Alliant Energy Neenah, LLC.

Description: Joint application of Wisconsin Power and Light Company, *et al.* for Order Authorizing Acquisition and Disposition of Jurisdictional Assets Under Section 203 of the FPA.

Filed Date: 06/30/2008.

Accession Number: 20080630–5140.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER91–569–042.

Applicants: Entergy Services, Inc.

Description: Entergy Arkansas, Inc *et al.* report to the Commission of a non-material change in status pursuant to the requirements of Order 652.

Filed Date: 06/30/2008.

Accession Number: 20080702–0009.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER94–1384–034; ER03–1315–006; ER01–457–006; ER02–1485–008; ER03–1109–007; ER03–1108–007; ER00–1803–005; ER99–2329–006; ER04–733–004.

Applicants: Morgan Stanley Capital Group, Inc.; MS Retail Development Corp; Naniwa Energy LLC; Power Contract Finance, LLC; Power Contract Financing II, Inc.; Power Contract Financing II, LLC; South Eastern Electric Development Corp; Utility Contract Funding II, LLC.

Description: Morgan Stanley Capital Group, Inc *et al.* submit their updated market power analysis and revised tariff sheets.

Filed Date: 06/30/2008.

Accession Number: 20080702–0004.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER97–4281–018; ER99–4357–006; ER99–2161–009; ER99–3000–008; ER00–2810–007; ER99–4359–006; ER99–4358–006; ER99–2168–009; ER99–2162–009; ER00–2807–007; ER99–4355–006; ER99–4356–006; ER00–3160–009; ER00–2313–008; ER02–2032–006; ER02–1396–006; ER02–1412–006; ER99–3637–007; ER99–1712–009; ER00–2808–008; ER00–2809–007.

Applicants: NRG Power Marketing LLC; Norwalk Power LLC; Arthur Kill Power LLC; Astoria Gas Turbines Power LLC; Conemaugh Power LLC; Connecticut Jet Power LLC; DEVON POWER LLC; Dunkirk Power LLC; Huntley Power LLC; Indian River Power LLC; MIDDLETOWN POWER LLC; NEO Freehold-Gen LLC; NRG Energy Center Paxton LLC; NRG New Jersey Energy Sales LLC; NRG Rockford LLC; NRG Rockford II LLC; Montville Power LLC; OSWEGO HARBOR POWER LLC; Somerset Power LLC; Vienna Power LLC; Keystone Power LLC.

Description: Updated Market Power Analysis of NRG Companies, *et al.*

Filed Date: 06/30/2008.

Accession Number: 20080630–5148.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER98–3184–011; ER00–494–005.

Applicants: TransAlta E. Mktg US; TransAlta Centralia Generation LLC

Description: TransAlta Entities submits updated market power analysis for the Northeast region, which demonstrates that the TransAlta Entities continue to be eligible to make wholesale sales of electric capacity & energy etc.

Filed Date: 06/30/2008.

Accession Number: 20080702–0003.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER98–4400–010.

Applicants: Pittsfield Generating Company, L.P.

Description: Pittsfield Generating Company, LP submits its request for determination of Category Status.

Filed Date: 06/30/2008.

Accession Number: 20080702–0101.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER99–2284–010; ER99–1773–010; ER00–1026–017; ER99–1761–006; ER01–1315–006; ER01–2401–012; ER98–2184–015; ER98–2185–015; ER98–2186–016; ER00–33–012; ER05–442–004; ER98–2185–015; ER01–751–011.

Applicants: AEE 2 LLC; AES CREATIVE RESOURCES LP; Indianapolis Power & Light Company; AES Eastern Energy, LP; AES IRONWOOD LLC; AES RED OAK LLC; AES Huntington Beach, LLC; AES Alamitos, LLC; AES Redondo Beach, LLC; AES Placerita, Inc.; Condon Wind Power, LLC; AES Alamitos, LLC; Mountain View Power Partners, LLC; South Eastern Generating Corporation.

Description: AES Eastern Energy, LP *et al.* submits an updated market power analysis (Triennial Update) in compliance with Order 697–A and a CD containing the Workpapers of Steve L McDonald.

Filed Date: 06/30/2008.

Accession Number: 20080702–0196; 20080630–4001.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER99–4102–008.

Applicants: Milford Power Company, LLC.

Description: Milford Power Company, LLC submits its market power update in compliance with FERC's order.

Filed Date: 06/27/2008.

Accession Number: 20080702–0113.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER00–1952–006; ER99–2287–003; ER03–802–006; ER01–1784–009; ER99–1248–008; ER03–222–008; ER08–333–002.

Applicants: Black Hills Power, Inc., Las Vegas Cogeneration LP, Fountain Valley Power, LLC, Harbor Cogeneration Company, LLC, Las Vegas Cogeneration II, LLC, Black Hills Wyoming, Inc., Black Hills Colorado, LLC.

Description: Notification of Change in Status of Black Hills Colorado, LLC, *et al.*

Filed Date: 06/30/2008.

Accession Number: 20080630–5147.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER00–2173–007; ER02–900–009.

Applicants: Northern Indiana Public Service Company; Sugar Creek Power Company.

Description: Notice of Change In Status.

Filed Date: 06/30/2008.

Accession Number: 20080630–5149.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER00–3412–007; ER00–816–005.

Applicants: Ameren Energy Generating Company; Ameren Energy Marketing Company.

Description: Ameren Energy Generating Co *et al.* notifies FERC that each is a Category 1 seller pursuant to Order 697 and 697–A under ER00–3412 *et al.*

Filed Date: 06/27/2008.

Accession Number: 20080701–0041.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER01–2569–007; ER98–4652–007; ER02–1175–006; ER01–2568–006.

Applicants: Boralex Livermore Falls LP; Boralex Stratton Energy LP; Boralex Fort Fairfield LP; Boralex Ashland, LP.

Description: Boralex Livermore Falls, LP *et al.* submits an application for determination of their status as a Category 1 seller pursuant to Order 697.

Filed Date: 06/30/2008.

Accession Number: 20080702–0015.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER01–2398–016.

Applicants: Liberty Electric Power, LLC.

Description: Liberty Electric Power submits its updated market power analysis.

Filed Date: 06/27/2008.

Accession Number: 20080701–0070.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER02–237–011.

Applicants: J. Aron & Company.

Description: J.Aron & Company submits updated market power analysis in compliance with the requirements of section 35.37 of the regulations of the FERC or Commission and the regional schedule set forth in Order 697–A for the Northeast region.

Filed Date: 06/30/2008.

Accession Number: 20080702–0126.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER02–24–010; ER01–560–011; ER01–389–008; ER02–963–009; ER05–524–004; ER02–26–009; ER94–389–028; ER02–1942–007; ER01–557–011; ER01–559–011.

Applicants: Armstrong Energy Limited Ptnshp, LLLP; Big Sandy Peaker Plant, LLC; Calumet Energy Team, LLC; Crete Energy Venture, LLC; Lincoln Generating Facility, LLC; Pleasants Energy, LLC; Tenaska Power Services Co.; Tenaska Virginia Partners, L.P.; University Park Energy, LLC; Wolf Hills Energy, LLC.

Description: Tenaska Energy, Inc, Tenaska Power Fund, LP, TPF II, LP and TPF II–A, LP submits an updated market power analysis and Order 697–A Compliance Filing.

Filed Date: 06/30/2008.

Accession Number: 20080702–0191.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER02–579–007.

Applicants: Capital District Energy Center Cogen.

Description: Application of Capitol District Energy Center Cogeneration Associates for Finding as a Category 1 Seller.

Filed Date: 06/30/2008.

Accession Number: 20080630–5152.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER02–580–008.

Applicants: Pawtucket Power Associates Limited Partnership

Description: Application of Pawtucket Power Associates Limited Partnership for finding as a Category 1 Seller.

Filed Date: 06/30/2008.

Accession Number: 20080630–5156.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER02–1081–004.

Applicants: Indeck-Oswego L.P.

Description: Indeck-Oswego Limited Partnership submits its Order 697 Compliance Filing and application for Category 1 Status.

Filed Date: 06/30/2008.

Accession Number: 20080702–0197.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER02–1884–006.

Applicants: Waterside Power, LLC.

Description: Waterside Power, LLC submits the updated market analysis pursuant to Order 697 and 697–A.

Filed Date: 06/27/2008.

Accession Number: 20080701–0042.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER02–1947–009; ER99–3669–008.

Applicants: Occidental Power Marketing, LP; Occidental Power Services, Inc.

Description: Occidental Power Marketing, LP *et al.* submits the updated market power analysis and rate schedule revisions pursuant to Order 697 and 697–A.

Filed Date: 06/27/2008.

Accession Number: 20080701–0040.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER02–2536–005.

Applicants: Bank of America, N.A.

Description: Bank of America, NA submits an updated market power analysis, request for treatment as Category 1 Seller, and rate schedule revisions pursuant to Order 697 and 697–A.

Filed Date: 06/30/2008.

Accession Number: 20080702–0006.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER02–2551–004.

Applicants: Cargill Power Markets, LLC.

Description: Cargill Power Markets, LLC requests FERC to determine that Cargill Power Markets is a Category 1 seller of electric capacity and energy pursuant to Order 697.

Filed Date: 06/30/2008.

Accession Number: 20080702–0008.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER03–428–007.

Applicants: ConocoPhillips Company.

Description: ConocoPhillips Company submits an updated market power analysis and tariff revisions.

Filed Date: 06/27/2008.

Accession Number: 20080701–0044.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER03–534–008.

Applicants: INGENCO Wholesale Power LLC.

Description: Triennial Market Power Analysis Filing of Ingenco Wholesale Power, LLC.

Filed Date: 06/30/2008.

Accession Number: 20080630–5048.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER03–719–011; ER03–720–010; ER03–721–010; ER98–830–020.

Applicants: New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company, LLC.

Description: Project Companies submits Notice of Non-Material Change in Status.

Filed Date: 06/27/2008.

Accession Number: 20080701–0043.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER03–775–005; ER00–136–004.

Applicants: FortisOntario Inc.; FortisUS Energy Corporation.

Description: FortisOntario Inc et al submits the joint triennial market power update.

Filed Date: 06/27/2008.

Accession Number: 20080701–0045.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008

Docket Numbers: ER03–845–003.

Applicants: Pinpoint Power, LLC.

Description: Pinpoint Power, LLC requests Category 1 seller classification pursuant to Order 697–A.

Filed Date: 06/27/2008.

Accession Number: 20080701–0046.

Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER03–879–006; ER03–880–006; ER03–882–006.

Applicants: D.E. Shaw Plasma Trading, LLC; D.E. Shaw & Co. Energy, LLC; D.E. Shaw Plasma Power, LLC.

Description: Shaw Parties submits application for Category 1 Seller Status, in lieu of an updated triennial market power analysis, and revised tariff sheets that incorporate the standardized tariff provision, as applicable, adopted in Order 697.

Filed Date: 06/30/2008.
Accession Number: 20080702–0115.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER04–1153–004.
Applicants: CAM ENERGY TRADING, LLC.
Description: CAM Energy Trading, LLC submits their compliance filing in compliance with Order 697 and application for a Category 1 Status.
Filed Date: 06/30/2008.
Accession Number: 20080702–0098.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER04–222–007.
Applicants: CPV Milford, LLC.
Description: CPV Milford, LLC submits First Revised Sheet 1 et al to FERC Electric Tariff, Original Volume 1.
Filed Date: 06/27/2008.
Accession Number: 20080701–0023.
Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER04–817–003.
Applicants: Indeck Maine Energy, LLC.
Description: Indeck Maine Energy, LLC submits Order 697 compliance filing and Application for Category 1 Status.
Filed Date: 06/30/2008.
Accession Number: 20080702–0118.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER04–878–003.
Applicants: Equus Power I, L.P.
Description: Equus Power I, LP submits an application for Category 1 Seller Classification and revisions to its market-based rate tariff in compliance with Order 697.
Filed Date: 06/30/2008.
Accession Number: 20080702–0095.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER05–1515–001.
Applicants: Texas Retail Energy, LLC.
Description: Texas Retail Energy, LLC notifies FERC that it is a Category 1 seller pursuant to Order 697.
Filed Date: 06/27/2008.
Accession Number: 20080701–0048.
Comment Date: 5 p.m. Eastern Time on Friday, July 18, 2008.

Docket Numbers: ER05–1420–006; ER03–774–009.
Applicants: Lehman Brothers Commodity Services Inc.; Eagle Energy Partners I, L.P.
Description: Lehman Brothers Commodity Services, Inc and Eagle Energy Partners I, LP submits their petition requesting classification as a Category 1 Seller pursuant to Order 697 and market-based rate compliance filings.
Filed Date: 06/30/2008.
Accession Number: 20080702–0001.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER05–305–004.
Applicants: Pinelawn Power LLC.
Description: Pinelawn Power, LLC submits an application for a Category 1 Seller and revisions to its market-based rate tariff in compliance with Order 697.
Filed Date: 06/30/2008.
Accession Number: 20080702–0092.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER06–1135–002; ER05–723–006; ER02–855–007.
Applicants: EPCOR Energy Marketing (US) Inc.; EPCOR POWER (CASTLETON) LLC; EPDC, Inc.
Description: EPCOR Energy Marketing (US) Inc et al submits an application for determination of their status as a Category 1 seller pursuant to Order 697 and 697–A.
Filed Date: 06/30/2008.
Accession Number: 20080702–0016.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER06–1355–003.
Applicants: Evergreen Wind Power, LLC.
Description: Evergreen Wind Power, LLC requests that the Commission determine that it qualifies as a Category 1 Seller and grant waiver of sixty (60) day prior notice requirement pursuant to Order 697.
Filed Date: 06/30/2008.
Accession Number: 20080702–0099.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER06–1367–004; ER07–239–003; ER99–1714–007; ER06–745–003.
Applicants: BG Dighton Power, LLC; BG ENERGY MERCHANTS, LLC; Lake Road Generating Company, LP; MASSPOWER.
Description: BG Dighton Power, LLC et al submits an updated market power analysis and compliance filing, pursuant to Order 697 and 697–A.
Filed Date: 06/30/2008.
Accession Number: 20080702–0097.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER06–1397–003; ER02–2310–006; ER07–705–003; ER05–463–005.
Applicants: Allegheny Ridge Wind Farm, LLC; Crescent Ridge, LLC; Mendota Hills, LLC; GSG, LLC.
Description: Allegheny Ridge Wind Farm, LLC et al submits an application for determination to qualify for Category 1 status and therefore are exempt from the requirements to submit an update market power analysis pursuant to Order 697.
Filed Date: 06/30/2008.
Accession Number: 20080702–0002.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER06–1409–002; ER06–1407–002; ER06–1408–002; ER06–1413–002; ER08–577–003; ER08–578–003; ER08–579–003.
Applicants: Noble Wethersfield Windpark, LLC,Noble Chateaugay Windpark, LLC,Noble Bellmont Windpark, LLC,Noble Ellenburg Windpark, LLC,Noble Bliss Windpark, LLC,Noble Clinton Windpark I, LLC,Noble Altona Windpark, LLC.
Description: Order No. 697 Updated Market Power Analysis.
Filed Date: 06/30/2008.
Accession Number: 20080630–5058.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER06–1419–002.
Applicants: MeadWestvaco Virginia Corporation.
Description: MeadWestvavo Virginia Corporation's submits triennial market power update and amendments to its market-based rate tariff for submission to the FERC.
Filed Date: 06/30/2008.
Accession Number: 20080702–0122.
Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23707 Filed 10–6–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2195–011]

Portland General Electric Company; Notice of Extension of Time for Filing Comments on Settlement Agreement Modification

October 1, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2195–011.

c. *Date filed:* August 26, 2004.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Clackamas River Hydroelectric Project.

f. *Location:* Clackamas River and Oak Grove Fork in Clackamas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Julie A. Kiel, Director of Hydro Licensing, 121 SW Salmon Street, Portland, Oregon 97204.

i. *FERC Contact:* Nicholas Jayjack, 202–502–6073; *Nicholas.Jayjack@ferc.gov.*

j. *Deadline for filing comments:* October 21, 2008. Reply comments due by October 31, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. *Background:* On March 30, 2006, Portland General Electric Company (PGE) filed a settlement agreement signed by it and 32 other parties, including federal and state resource agencies, Indian tribes, and non-governmental organizations to address issues associated with the relicensing of the Clackamas River Hydroelectric Project. The settlement agreement includes proposed license articles for the protection and enhancement of water quality, fishery resources, terrestrial resources, recreation resources, land uses, project area aesthetics, and cultural resources.

On July 21, 2008, PGE filed a modification of Proposed License Article 14 to make the settlement agreement consistent with its proposal in a June 28, 2008, application to Oregon Department of Environmental Quality for certification pursuant to section 401 of the Clean Water Act. Specifically, the parties modified Proposed License Article 14 to stipulate that PGE file a plan for achieving certain water temperature reductions below the Faraday development tailrace through either seasonal drawdowns or channelization of Faraday Lake.

Pursuant to 18 CFR 385.602, comments on the settlement agreement modification were required to be filed by August 11, 2008 (i.e., not later than 20 days after the filing of the settlement agreement modification) with reply comments due 10 days later. There were no comments filed.

By this notice and pursuant to 18 CFR 385.602, additional opportunity is provided to submit comments and reply comments concerning the modified provisions of the settlement agreement. The deadline is as specified in item j above.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23622 Filed 10–6–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC08–161–000]

Florida Gas Transmission Company, LLC; Notice of Filing

October 1, 2008.

Take notice that on September 30, 2008, Florida Gas Transmission Company, LLC filed a response to the Chief Accountant's September 16, 2008, Data Request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on October 22, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23623 Filed 10–6–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–475–000]

Pecan Pipeline (North Dakota), Inc.; Notice of Petition for Declaratory Order

October 1, 2008.

Take notice that on September 18, 2008, Pecan Pipeline (North Dakota), Inc., filed a petition for a declaratory order under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2008), requesting that the Commission disclaim jurisdiction over proposed construction and operation of certain natural gas facilities because such facilities perform a gathering function exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time October 30, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23620 Filed 10–6–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12569–001]

Public Utility District No. 1 of Okanogan County; Notice of Soliciting Additional Study Requests

October 1, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* P–12569–001.

c. *Date filed:* August 22, 2008.

d. *Applicant:* Public Utility District No. 1 of Okanogan County.

e. *Name of Project:* Enloe Hydroelectric Project.

f. *Location:* On the Similkameen River, near the Town of Oroville, Okanogan County, Washington. The project occupies about 35.47 acres of federal lands under the jurisdiction of the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* John R. Grubich, General Manager, Public Utility District No. 1 of Okanogan County, P.O. Box 912, Okanogan, Washington 98840, (509) 422–8485.

i. *FERC Contact:* Dianne Rodman, 888 First Street, NE., Room 6B–02, Washington, DC 20426, (202) 502–6077, *dianne.rodman@ferc.gov.,* and Kim A. Nguyen, 888 First Street, NE., Room 63–11, Washington, DC 20426, (202) 502–6105, *kim.nguyen@ferc.gov.*

j. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission, and serve a copy of the request on the applicant.

k. *Deadline for filing additional study requests:* October 31, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. The application is not ready for environmental analysis at this time.

m. The Enloe Project would consist of: (1) An existing 315-foot-long and 54-foot-high concrete gravity arch dam with an integrated 276-foot-long central overflow spillway with 5-foot-high flashboards; (2) an existing 76.6-acre reservoir (narrow channel of the Similkameen River) with a storage capacity of 775 acre-feet at 1049.3 feet mean sea level; (3) an 190-foot-long intake canal on the east abutment of the dam diverting flows into the penstock intake structure; (4) a 35-foot-long by 30-foot-wide penstock intake structure; (5) two above-ground 8.5-foot-diameter steel penstocks carrying flows from the intake to the powerhouse; (6) a powerhouse containing two vertical Kaplan turbine/generator units with a total installed capacity of 9.0 megawatts; (7) a 180-foot-long tailrace channel that would convey flows from the powerhouse to the Similkameen River, downstream of the Similkameen Falls; (8) a new substation adjacent to the powerhouse; (9) a new 100-foot-long, 13.2-kilovolt primary transmission line from the substation connecting to an existing distribution line; (10) new and upgraded access roads, and (11) appurtenant facilities.

The project is estimated to generate an average of 54 gigawatthours annually.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23621 Filed 10–6–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2007–0982; FRL–8726–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Environmental and Economic Effects of Environmental Conflict Resolution at EPA; EPA ICR No. 2306.01, OMB Control No. 2090–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2007–0982 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OGC–2007–0982. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: William Hall, 2388A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–0214; *fax number:* (202) 501–1715; *e-mail address: hall.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OGC–2007–0982, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room and Docket is 202–566–1744.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are individuals who negotiated agreements reached in environmental conflict resolution (ECR) cases sponsored by or involving EPA. ECR is third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. Affected entities may also include participants in non-ECR cases (i.e., where a third party was not involved) with similar characteristics to ECR cases that are selected for comparison. Participants in both ECR and non-ECR cases typically represent a wide range of interests, including various agencies and levels of government, industry, and environmental advocacy groups.

Title: Environmental and Economic Effects of Environmental Conflict Resolution at EPA.

ICR numbers: EPA ICR No. 2306.01, OMB Control No. 2090–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection will enable EPA's Conflict Prevention and Resolution Center to evaluate the environmental and economic effects of agreements reached through the Agency's Environmental Conflict Resolution (ECR) process compared to decisions that might have been achieved through other decision-making processes (e.g., litigation). ECR is third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use.

Information will be collected from representatives of organizations that participated in ECR decision-making processes sponsored by or involving EPA in a range of environmental cases. For purposes of comparison, information will also be collected from representatives of organizations that were involved in non-ECR (i.e., without the assistance of a third party) decision making processes that otherwise have similar characteristics to the ECR cases (e.g., similar environmental issues, similar geography). Case participants will complete a survey instrument with questions concerning the environmental effects, implementation of the agreement or decision including resources required, relations with other parties to the agreement, reasons for joining an ECR process or participating in a non-ECR decision making process, costs of the process, and quality of information held by parties when reaching agreement or making the decision.

This information collection will help satisfy the joint OMB and President's Council on Environmental Quality (CEQ) Memorandum on ECR (November 2005, available at *http://www.whitehouse.gov/ceq/joint-statement.html*) that directed agencies, among other things, to ''recognize and support needed upfront investments in collaborative processes and conflict resolution and demonstrate those savings in performance and accountability measures to maintain a budget neutral environment.'' Data collected will be used to analyze and assess EPA's ECR procedures, to ensure program activities are executed and managed in a cost-effective manner, and provide information for Agency managers and staff to use when deciding whether to use ECR, consistent with the principles of the Government Performance Results Act.

This information collection will be voluntary for all respondents. As required by 5 U.S.C. 524(h), the questionnaires for parties in dispute resolution proceedings covered by the Administrative Dispute Resolution Act of 1996 will be carefully designed and administered to ensure that the identity of the parties and the specific issues in controversy will remain confidential. The questionnaires for matters that did not involve dispute resolution proceedings will allow respondents to claim that their responses contain Confidential Business Information. The Agency will protect questionnaires subject to CBI claims from disclosure to the extent authorized by 2 CFR Subpart B, Confidentiality of Business Information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 300.

Frequency of response: on occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 50 hours.

Estimated total annual costs: $2239.00 This includes an estimated burden cost of $2239.00 and an estimated cost of $0 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to

OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 30, 2008.

Patricia K. Hirsch,

Acting General Counsel, Office of General Counsel.

[FR Doc. E8–23670 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0120; FRL–8725–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks (Renewal); EPA ICR Number 1285.07, OMB Control Number 2060–0132

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 6, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2005–0120, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, Mail Code 6403J, NW., Washington, DC 20460; *telephone number:* 202–343–9264; *fax number:* 202–343–2804; *e-mail address: reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 30, 2008 (73 FR 36863), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2005–0120, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks (Renewal).

ICR numbers: EPA ICR Number 1285.07, OMB Control Number 2060–0132.

ICR Status: This ICR is scheduled to expire on November 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: Section 206(g) of the Clean Air Act, as amended, contains nonconformance penalty provisions (NCP) that allow manufacturers to introduce into commerce heavy-duty engines or vehicles (including light-duty trucks) that fail to comply with certain emission standards upon payment of a monetary penalty. Manufacturers who elect to use NCPs are required to test production engines and vehicles to determine the extent of their nonconformity and conduct a Production Compliance Audit (PCA). The collection activities of the nonconformance penalty program include periodic reports and other information (including the results of emission testing conducted during the PCA). EPA will use this information to ensure that manufacturers are complying with the regulations and that appropriate nonconformance penalties are being paid. Responses to this collection are voluntary.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by these actions are Automobile Manufacturers; Light Truck and Utility Vehicle Manufacturers; Heavy Duty Truck Manufacturers; Gasoline Engine and

Engine Parts Manufacturers; Motor Vehicle Body Manufacturers; Construction Machinery Manufacturers; Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturers; Military Armored Vehicle, Tank, and Tank Component Manufacturers; Other Engine Equipment Manufacturers; Other Motor Vehicle Electrical and Electronic Equipment Manufacturers.

Estimated Number of Respondents: 2.

Frequency of Response: Annual, quarterly and on occasion.

Estimated Total Annual Hour Burden: 1,178.

Estimated Total Annual Cost: $98,789, includes $18,180 in O&M costs and no capital costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: October 1, 2008.

Sarah Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–23686 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8726–5]

California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines; Within-the-Scope Request; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has amended or adopted emission standards and accompanying testing procedures for new nonroad compression ignition (CI) engines in two CARB rulemakings. By letter dated July 18, 2007, CARB submitted a request seeking EPA confirmation that its amendments affecting three broad power categories expressed in kilowatts (kW) (under 19 kW, 19 kW to under 130 kW, and 130kW and greater) are within the scope of previous authorizations issued by EPA under section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(e). In the alternative CARB seeks a new authorization for these standards. This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on November 6, 2008 beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by October 27, 2008, expressing its interest in presenting oral testimony. By November 3, 2008, any person who plans to attend the hearing should call David Dickinson at (202)343–9256 to learn if a hearing will be held. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments by November 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0640, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2008–0640, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0640. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St, NW., Washington, DC 20005 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. *Telephone:* (202) 343–9256, *Fax:* (202) 343–2804, *e-mail address: Dickinson.David@EPA.GOV*.

SUPPLEMENTARY INFORMATION:

Background and Discussion: Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[1]

[1] Section 209(e)(1) states, in part: No State or and political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles used in farm equipment or vehicles and which are smaller that 175 horsepower. (B) New locomotives or new engines used in locomotives. EPA's regulation was published at 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, §§ 85.1601 *et seq.* A new rule, signed on

Continued

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1). The section 209(e) rule and its codified regulations [2] formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards and they are as follows:

(a) The Administrator shall grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[3] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[4] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[5]

CARB has submitted to EPA its 2000 Off-road Compression-Ignition Engine regulations adopted at its January 28, 2000 public hearing (these regulations codified and incorporated all new off-road CI emission standards and test procedures in division 3, chapter 9, article 4 of title 13, California Code of Regulations to include all California-certified 2000 and subsequent model year off-road CI engines) and its regulations adopted at its December 9, 2004 Board hearing (these regulations harmonized California's standards and procedures with those promulgated by EPA in its Tier 4 rulemaking (69 FR 38958 (June 29, 2004) and EPA subsequent technical amendments at 70 FR 40420 (July 13, 2005)).

When EPA receives new authorization requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA usually publishes a decision in the **Federal Register** and concurrently invites public comment if an interested part is opposed to EPA's decision.

Although CARB has submitted a within the scope waiver request, EPA invites comment on the following issues: whether California's standards, within the context of a within the scope analysis (a) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, and (c) raise new issues affecting EPA's previous waiver determinations. Please also provide comment that if CARB's standards were not found to be within the scope of previous waivers and instead required a full waiver analysis, whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

EPA also invites comment on CARB's suggestion to EPA that where CARB is harmonizing its standards with a more stringent federal standard then EPA should conduct a pre-determination hearing where interested parties have the opportunity to comment both on the appropriateness of using the within the scope mechanism and on the underlying authorization issues.[6]

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are nod adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the residing officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until November 21, 2008. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any,

September 4, 2008, moves these provisions to 40 CFR Part 1074.

[2] See 40 CFR Part 85, Subpart Q, § 85.1605. Upon effectiveness of the new rule, these criteria will be codified at 40 CFR 1074.105.

[3] See 59 FR 36969, 36983 (July 20, 1994).

[4] Section 209(e)(1) of the Act has been implemented, see 40 CFR Part 85, Subpart Q §§ 85.1602, 85.1603. Upon effectiveness of the new rule noted above, these permanently preempted categories will be codified at 40 CFR 1074.10, 1074.12.

[5] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. See, *e.g.*, 43 FR 32182 (July 25, 1978).

[6] See CARB's authorization support document submitted on July 18, 2008 at p. 21.

relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments want EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently place in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the pubic docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: October 1, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. E8–23671 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8726–6]

California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines—In-Use Fleets; Authorization Request; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for Public Hearing and Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted emission standards for fleets that operate nonroad, diesel fueled equipment with engines 25 horsepower (hp) and greater. By letter dated August 12, 2008, CARB submitted a request seeking EPA authorization, pursuant to section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(e), of its regulation requiring such fleets to meet fleet average emissions standards for oxides of nitrogen and particulate matter, or, alternatively, to comply with best available control technology requirements for the vehicles in those fleets. This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on October 27, 2008, beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by October 20, 2007 expressing its interest in presenting oral testimony. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and, instead, consider CARB's request based on written submissions to the docket. Any party may submit written comments by November 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0691, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2008–0691, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0691. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St, NW., Washington, DC 20005 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. *Telephone:* (202) 343–9256, Fax: (202) 343–2804, *e-mail address: Dickinson.David@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

Background and Discussion: Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[1]

[1] Section 209(e)(1) states, in part: No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment

Continued

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1). The section 209(e) rule and its codified regulations [2] formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards and they are as follows:

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[3] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[4] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[5]

CARB has submitted to EPA its In-Use Off-Road Diesel-Fueled Fleets regulation adopted at its July 26, 2007 public hearing (by Resolution 07–19) and subsequently modified after supplemental public comment by CARB's Executive Officer by the In-Use Regulation in Executive Order R–08–002 on April 4, 2008 (these regulations are codified at title 13, California Code of Regulations sections 2449 through 2449.3). CARB's regulations require fleets that operate nonroad, diesel-fueled equipment with engines 25 hp and greater to meet fleet average emission standards for oxides of nitrogen and particulate matter. Alternatively, the regulations require the vehicles in those fleets to comply with best available control technology requirements. Compliance for the largest fleets (fleets with a total maximum power greater than 5000 hp) is required beginning March 1, 2010, for medium-sized fleets (greater than 2500 hp through 5000 hp) beginning March 1, 2013, and for small fleets (up to 2500 hp) beginning March 1, 2015.

Please provide comment whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are not adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until November 28, 2008. Following the expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as Confidential Business Information (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the pubic docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

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or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

EPA's regulation was published at 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, §§ 85.1601 *et seq.* A new rule, signed on September 4, 2008, moves these provisions to 40 CFR Part 1074.

[2] See 40 CFR Part 85, Subpart Q, § 85.1605. Upon effectiveness of the new rule, these criteria will be codified at 40 CFR 1074.105.

[3] *See* 59 FR 36969, 36983 (July 20, 1994).

[4] Section 209(e)(1) of the Act has been codified at 40 CFR Part 85, Subpart Q §§ 85.1602, 85.1603. Upon effectiveness of the new rule noted above, these permanently preempted categories will be codified at 40 CFR 1074.10, 1074.12.

[5] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. See, *e.g.*, 43 FR 32182 (July 25, 1978).

Dated: October 1, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. E8–23682 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8726–4]

Cross-Media Electronic Reporting Rule State Authorized/Approved Program Modification/Revision Approval: State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This action announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Oklahoma's request for modifications/revisions to their authorized programs to allow electronic reporting for certain of their authorized programs under title 40 and specific reports.

DATES: EPA's approval is effective October 7, 2008.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov*, or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as Part 3 of Title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribe, or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D also provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000 (b) through (e) of 40 CFR Part 3, Subpart D provides for special procedures for program revisions and modifications that provide for electronic reporting, to be used at the option of the state, tribe, or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the Subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting component of its authorized programs covered by the application and will use electronic document receiving systems that meet the applicable Subpart D requirements.

On September 7, 2007, the State of Oklahoma Department of Environmental Quality (OKDEQ) submitted a consolidated application for their Electronic Document Receiving System (ERDS) addressing revisions or modifications to multiple authorized/approved programs under air, water, and waste.

EPA has reviewed OKDEQ's request to revise or modify multiple authorized/approved programs and, based on this review, EPA has determined that portions of the application relating to the programs and specific reports identified in this Notice, when compared to the federal regulations, meet the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve OKDEQ's request for modifications/revisions to certain of their authorized programs under title 40 to allow electronic reporting for specific reports under those programs is being published in the **Federal Register**.

EPA has approved OKDEQ's request for modifications/revisions to following of their authorized programs to allow electronic reporting for the specified reports:

- *Program:* Part 60 Standards of Performance for New Stationary Sources; *Reports:* New Source Performance Standards Reports under § 60.7, and Continuous Emissions Monitors/Continuous Opacity Monitors under § 60.7(c) and (d);
- *Program:* Part 61 National Emission Standards For Hazardous Air Pollutants (NESHAP); *Report:* NESHAP Reports Notification of Start Up under § 61.09;
- *Program:* Part 63 NESHAP for Source Categories; *Reports:* Continuous Emissions Monitors/Continuous Opacity Monitors under § 63.10(e)(3), and Maximum Achievable Control Technology Reports under § 63.9;
- *Program:* Part 70 State Operating Permit Programs; *Reports:* Annual Compliance Certifications under § 70.6, and Semi-Annual Monitoring and Deviation Reports (SAR) under § 70.6;
- *Program:* Part 122 EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES); *Reports:* Stormwater Notice of Intent/Notice of Termination under § 122.26, and Wastewater Daily Monitoring Reports (NPDES) under § 122.41;
- *Programs:* Parts 144 through 148 Underground Injection Control (UIC) Program, State UIC Program Requirements, UIC Program: Criteria and Standards, State UIC Programs, and Hazardous Waste Injection Restrictions; *Report:* UIC Permit Applications;
- *Program:* Part 261 Identification And Listing Of Hazardous Waste; *Report:* Regulated Waste Activity Notification;
- *Program:* Part 270 EPA Administered Permit Programs: The Hazardous Waste Permit Program; *Report:* EPA Hazardous Waste Permit Application Part A Form (EPA Form 8700–23).

OKDEQ was notified of EPA's determination to approve its application relating to the authorized programs and specific reports listed above in a letter dated September 26, 2008.

Dated: September 26, 2008.

Molly A. O'Neill,

Assistant Administrator and Chief Information Officer.

[FR Doc. E8–23693 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8725–6]

Notice of Availability of Final NPDES General Permits MAG07000 and NHG07000 for Discharges From Dewatering Activities in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire: the Dewatering General Permit (DGP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Final NPDES General Permits MAG07000 and NHG07000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA-New England, is providing a notice of

availability of the final National Pollutant Discharge Elimination System (NPDES) general permits for dewatering activity discharges to certain waters of the Commonwealth of Massachusetts (including both Commonwealth and Indian country lands) and the State of New Hampshire. These General Permits replace the Construction Dewatering General Permits, which expired on September 23, 2007. The notice of availability of the draft NPDES general permits for dewatering activity discharges was published in the **Federal Register** on July 21, 2008 and the public notice period ran from July 22, 2008 to August 21, 2008. In addition to comments on the draft general permits, EPA also requested comments on the cost associated with a limit for total residual chlorine (TRC) for discharges containing potable water. No comments were received during the public notice period regarding either the draft permits or the cost associated with a TRC limit for discharges containing potable water.

The final General Permits establish Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for facilities with construction dewatering of groundwater intrusion and/or storm water accumulation from sites less than one acre and short-term and long-term dewatering of foundation sumps. Based on inter-governmental agency review, the following changes have been made from the draft permit:

• Appendix III was updated to include the most recent information regarding federally-listed threatened and endangered species and the process by which permittees determine if the Endangered Species Act criteria are met.

• Coverage for and references to discharges originating from flushing of potable water lines and pump testing of water wells were removed from the General Permit. Facilities with these types of discharges retain the ability to apply for coverage under an individual permit.

Owners and/or operators of facilities with dewatering discharges, including those currently authorized to discharge under the expired General Permits, will be required to submit an NOI to be covered by the General Permit to both EPA-New England and the appropriate state agency. After EPA and the State have reviewed the NOI, the facility will receive a written notification from EPA of permit coverage and authorization to discharge under the General Permit. The eligibility requirements for coverage under the general permits are discussed in detail under Part 3 of the permit. The reader is strongly urged to go to that section to determine eligibility. An individual permit may be necessary if the discharger cannot meet the terms and conditions or eligibility requirements in the permit.

DATES: The general permits shall be effective on the date of signature and will expire at midnight, five (5) years from the last day of the month preceding the effective date.

ADRESSES: The required notification information to obtain permit coverage is provided in the general permits. This information shall be submitted to both EPA and the appropriate state. Notification information may be sent via USPS or e-mail to EPA at EPA-Region 1, Office of Ecosystem Protection, CIP, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023 or e-mail address *GeneralPermit.Dewatering@epa.gov.* Notification information shall be submitted to the appropriate State agency at the addresses listed in Appendix V of the General Permits.

FURTHER INFORMATION CONTACT: Additional information concerning the final General Permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Sara Green at *Green.Sara@EPA.GOV* or (617) 918–1574. The general permits may be viewed over the Internet at the EPA web site *http://www.epa.gov/region1/npdes/dewatering.html.* To obtain a paper copy of the general permits, please contact Ms. Green using the contact information provided above. A reasonable fee may be charged for copying requests.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the Clean Water Act (CWA) Section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of the general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers,* 417 F.3d 1272, 1284–85 (DC Cir.2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition of a 'rule.' * * * As such, each NWP constitutes a rule * * *'').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [i.e., adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications, rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (e.g., small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act. Accordingly, EPA has committed to operating in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA).

EPA anticipates that for most general permits the Agency will be able to conclude that there is not a significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent with EPA guidance regarding RFA certification.[1]

Consistent with the above discussion, EPA has concluded that the issuance of the 2008 DGP would not affect a substantial number of small entities. An estimated 36 construction projects per year were authorized under the 2002 General Permits, a substantial number of which were not operated by small entities. The 2008 DGP includes expanded coverage for additional types of discharges; however, these discharges are temporary in nature. At any one time, fewer than 100 small entities are expected to be discharging and incurring costs. In addition, requirements in the 2008 DGP remain substantially similar to those in the 2002 General Permit, except for the addition of total residual chlorine (TRC) limits for discharges from municipal sources. Therefore, EPA has concluded that the issuance of the 2008 DGP is unlikely to have an adverse economic impact on small entities.

Dated: September 30, 2008.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. E8–23791 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8725–7]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held October 21–23, 2008 at The Churchill Hotel, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet on Tuesday, October 21, Wednesday, October 22, and Thursday, October 23, 2008 at The Churchill Hotel.

ADDRESSES: The Churchill Hotel, 1914 Connecticut Ave NW., Washington DC 20009, Suite 275.

FOR FURTHER INFORMATION CONTACT: Carolyn Hubbard, Child and Aging Health Protection Division, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2189, *hubbard.carolyn@epa.gov*.

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The CHPAC plenary will meet on Wednesday, October 22 from 8:30 a.m. to 5 p.m., and Thursday, October 23, from 8:30 a.m. to 12:30 p.m. The Task Groups will meet Tuesday, October 21, from 1 p.m. to 5 p.m. Agenda items include a discussion of chemicals management policy, a presentation about the process for producing the next edition of America's Children and the Environment, and a discussion on formulating advice on children's health to the EPA Administrator following the transition.

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Carolyn Hubbard at 202–564–2189 or *hubbard.carolyn@epa.gov*. To request accommodation of a disability, please contact Carolyn Hubbard preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 1, 2008.

Carolyn Hubbard,

Designated Federal Official.

Draft Agenda

Tuesday, October 21, 2008

1 p.m.–5 p.m. Chemicals Management Task Group Meeting.

Wednesday, October 22, 2008: CHPAC Plenary Session

8:30–9 Continental Breakfast and Gathering.

9–9:30 Welcome, Introductions, & Agenda Review.

9:30–10 Highlights of Recent EPA Activities.

10–11 Presentation on ANPR on Regulating Greenhouse Gases under the Clean Air Act.

11–11:15 Break.

11:15–12:15 Review of Chemicals Management Comment Letter.

12:15–1:15 Lunch (on your own).

1:15–2:45 Panel on America's Children and the Environment.

2:45–3:30 Revisions to Chemicals Management Comment Letter.

3:30–3:45 Break.

3:45–4 Presentation on EPA Transition process.

4–5 Public Comment.

5 Adjourn for the Day.

[1] EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site: *http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf*. After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.

Thursday, October 23, 2008: CHPAC Plenary Session Continued

8:30–9 Continental Breakfast and Gathering.
9–9:15 Check In and Agenda Review.
9:15–10:45 Strategic Discussion of Potential CHPAC Advice to the New Administrator.
10:45–11 Break.
11–12 Closure on Chemicals Management Comment Letter.
12–12:30 Wrap Up/Next Steps. Objective: Review agreed-upon action items and next steps
- CHPAC Facilitator
- Carolyn Hubbard, Designated Federal Officer

12:30 Adjourn Plenary.

[FR Doc. E8–23687 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8721–9]

Proposed Administrative Cost Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of the Illinois Power Subarea of the Ottawa Radiation Site, Ottawa, IL

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the Illinois Power subarea of the Ottawa Radiation Superfund Site in Ottawa, Illinois with Illinois Power Company d/b/a Ameren IP. The settlement requires the settling parties to: operate and maintain a radon reduction system at the property; record a restrictive covenant that prohibits interference with the building foundations and system; agree to use a covenant deed that reserves the right for Illinois Power, U.S. EPA and the State to enforce the restrictive covenant if Illinois Power conveys the property; and reimburse $35,000 of U.S. EPA's response costs incurred at the Illinois Power subarea. In exchange for the payment and work performed, the United States covenants not to sue or take administrative action pursuant to Sections 106, 107 and 122 of CERCLA, 42 U.S.C. 9606, 9607 and 9622 for the work and past response costs at the Illinois Power subarea of the Ottawa Radiation Site. In addition, Illinois Power is entitled to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for the work performed and past costs incurred at the Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the cost recovery provisions of the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at U.S. EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before November 6, 2008.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6059. Comments should reference the Illinois Power subarea of the Ottawa Radiation Site, Ottawa, Illinois and EPA Docket No. VW08C914, and should be addressed to Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6059.

AUTHORITY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: September 19, 2008.

Douglas Balloti,

Acting Director, Superfund Division.

[FR Doc. E8–23746 Filed 10–6–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Approved by the Office of Management and Budget (OMB)

September 30, 2008.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, via the Internet at *PRA@fcc.gov* or on (202) 418–2918.
Commission at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1115.
OMB Approval Date: 9/24/2008.
Expiration Date: 9/30/2011.
Title: Sections 15.124, 27.20, 54.418, 73.674, 76.1630, DTV Consumer Education Initiative; FCC Form 388.
Form No.: FCC Form 388.
Number of Respondents/Responses: 11,022 respondents; 70,026 responses.
Estimated Time Per Response: 0.5 to 85 hours
Total Annual Burden: 155,646 hours.
Total Annual Cost: None.
Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 4(i), 303(r), 335, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r), 335, and 336.
Nature and Extent of Confidentiality: No need for confidentiality required with this information collection.
Needs and Uses: The Commission adopted on April 23, 2008, an Order of Reconsideration, In the Matter of DTV Consumer Education Initiative, MB Docket 07–148, FCC 08–119. In this Order, we modify our requirements regarding the timing, scope, and content of manufacturer notices and the method of delivery of eligible telecommunications carriers (ETC) notices, and clarify other manufacturer requirements. The revised requirements that were approved by OMB on an

emergency basis on May 22, 2008 for a six month time period are as follows:

(1). Consumer Electronics Manufacturer Notices (47 CFR 15.124).

The ''responsible party,'' as defined the Commission's rules, has to include a notice about the digital television (DTV) transition on television receivers and related devices manufactured between May 30, 2008 and March 31, 2009. The notices themselves must include the Commission's contact information (rather than the manufacturer's), convey information about the DTV transition, and must be included with covered devices.

(2). Eligible telecommunications carriers (ETCs) Federal Universal Service Low-Income Program Participant Notices (47 CFR 54.418). ETCs that receive federal universal service funds shall provide their Lifeline or Link-up customers (low-income customers) with notices about the transition for over-the-air full power broadcasting from analog to digital service (the ''DTV Transition'') in monthly bills, bill notices, or as a monthly stand-alone mailer (e.g., postcard, brochure), beginning May 30, 2008 through March 31, 2009.

The following requirements also have been approved by OMB:

(1) Broadcaster Education and Reporting (47 CFR 73.674).

(a) On-air Education. Broadcasters must provide on-air DTV Transition consumer education information (e.g., via Public Service Announcements (PSAs), information crawls, snipes or tickers) to their viewers. Broadcasters must comply with one of three alternative sets of rules as provided in the Report and Order.

(b) DTV Consumer Education Quarterly Activity Report, FCC Form 388. Broadcasters must electronically file a report about its DTV Transition consumer education efforts to the Commission on a quarterly basis. Broadcasters must begin filing these quarterly reports no later than April 10, 2008. In addition, if the broadcaster has a public website, they must post these reports on that website.

(2) Multichannel Video Programming Distributor (MVPD) Customer Bill Notices (47 CFR 76.1630). MVPDs must provide monthly notices about the DTV transition in their customer billing statements. They include (but are not limited to), for example: cable operators, direct broadcast satellite (DBS) carriers, open video system operators, and private cable operators.

(3) DTV.gov Partner Consumer Education Reporting. DTV.gov Transition Partners must report their consumer education efforts, as a condition of continuing Partner status. They must begin filing these quarterly reports no later than April 10, 2008.

(4) 700 MHz Wireless Service Licensee/Permitees Consumer Education Reporting (47 CFR 27.20). Winners of the 700 MHz spectrum auction must report their consumer education efforts to the Commission on a quarterly basis. These parties must file the first by the tenth day of the first calendar quarter following the initial grant of the license authorization that the entity holds.

The Commission received the full three year OMB approval for all of the requirements contained in information collection 3060–1115 on September 24, 2008.

OMB Control No.: 3060–1117.

OMB Approval Date: 9/24/2008.

Expiration Date: 9/30/2011.

Title: Viewer Notification Requirements in the Third DTV Periodic Report and Order, FCC 07–228.

Form No.: Not applicable.

Number of Respondents/Responses: 1,050 respondents; 174,000 responses.

Estimated Time Per Response: 0.01–0.33 hours

Total Annual Burden: 12,015 hours.

Total Annual Cost: $210,000.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: No need for confidentiality required with this information collection.

Needs and Uses: Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 22, 2007, the Commission adopted a Report and Order, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–228 to establish the rules, policies and procedures necessary to complete the nation's transition to DTV. In the Report and Order, the Commission adopted rules to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, full-authorized post-transition (DTV) facility. The Commission recognized that broadcasters may need regulatory flexibility in order to achieve these goals. Accordingly, the Commission affords broadcasters the opportunity for regulatory flexibility, if necessary, to meet their DTV construction deadlines. The Commission, however, must also ensure that no consumers are left behind in the DTV transition. Therefore, the Commission requires broadcasters that choose to reduce or terminate TV service to comply with viewer notification requirements.

Specifically, as a result of the Third DTV Periodic Report and Order, stations must comply with a viewer notification requirement (*i.e.*, stations must notify viewers about their planned service reduction or termination) if:

(1) The station will permanently reduce or terminate analog or pre-transition digital service before the transition date; or

(2) The station will not serve at least the same population that receives their current analog TV and DTV service after the transition date.

Viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30/60-days prior to the station's termination of full, authorized analog service. These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service or the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, i.e., how and when the station's digital signal can be received; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–23752 Filed 10–6–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, October 8, 2008 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

DRAFT ADVISORY OPINION 2008–10: VoterVoter.com by Joseph M. Birkenstock, Esquire.

DRAFT ADVISORY OPINION 2008–11: Lawrence Martin E. Brown.

DRAFT ADVISORY OPINION 2008–12: Independent Party of Oregon by Linda K. Williams, Esquire.

MANAGEMENT AND ADMINISTRATIVE MATTERS.

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Press Officer; Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E8–23649 Filed 10–6–08; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2008.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Riverview Financial Corporation, (in organization) Halifax, Pennsylvania, to become a bank holding company by merging with First Perry Bancorp, Inc., Marysville, Pennsylvania, and HNB Bancorp, Inc., and thereby acquire Halifax National Bank, both of Halifax, Pennsylvania, and The First National Bank of Marysville, Marysville, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Jefferson Bancshares, Inc., Morristown, Tennessee, to become a bank holding company by acquiring 100 percent of the voting shares of State of Franklin Bancshares, Inc., and thereby acquire State of Franklin Savings Bank, both of Johnson City, Tennessee. Comments regarding this application must be received not later than October 17, 2008.

Board of Governors of the Federal Reserve System, October 2, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–23645 Filed 10–6–08; 8:45 am]

BILLING CODE 6210–01–S

Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, October 14, 2008.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 3, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–23893 Filed 10–3–08; 4:15 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Bank of America Corporation, Charlotte, North Carolina, to acquire 100 percent of the voting shares of Merrill Lynch Bank & Trust Co., FSB, New York, New York, and thereby indirectly acquire Merrill Lynch Bank USA, Salt Lake City, Utah, and thereby engage in operating a savings association and an industrial bank, pursuant to section 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–23644 Filed 10–6–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Cross-Site Evaluation of the Infant Adoption Awareness Training Program for Projects Initially Funded in Fiscal Year 2006-NEW.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), Children's Bureau (CB), will conduct the Cross-Site Evaluation of the Infant Adoption Awareness Training Program (IAATP). Title XII, Subtitle A, of the Childrens Health Act of 2000 (CHA) authorizes the Department of Health and Human Services to make Infant Adoption Awareness Training grants available to national, regional, and local adoption organizations for the purposes of developing and implementing programs that train the staff of public and non-profit private health service organizations to provide adoption information and referrals to pregnant women on an equal basis with all other courses of action included in non-directive counseling of pregnant women. Participants in the training include individuals who provide pregnancy or adoption information and those who will provide such services after receiving the training, with Title X (relating to voluntary family planning projects), Section 330 (relating to community health centers, migrant health centers, and centers serving homeless individuals and residents of public housing), and CHA-funded school-based health centers, receiving priority to receive the training. A total of six organizations were awarded IAATP funding in 2006.

Section 1201(a)(2)(A) of the IAATP legislation requires grantees to develop and deliver trainings that are consistent with the Best Practice Guidelines for Infant Adoption Awareness Training. The IAATP guidelines address training goals, basic skills, curriculum and training structure. A complete description of the guidelines is available at *http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/iaatp.htm*.

In addition, grantees are required to conduct local evaluation of program outcomes and participate in the national evaluation of the extent to which IAATP training objectives are met. The Infant Adoption Awareness Training Program: Trainee Survey is the primary data collection instrument for the national cross-site evaluation. Respondents will complete the survey prior to receiving training and approximately 90 days after the training to assess the extent to which trainees demonstrate sustained gains in their knowledge about adoption, and to determine the impact of the training on their subsequent work with pregnant women.

1. Do health care workers who participate in the IAATP training: Demonstrate enhanced knowledge, attitudes, skills, and behaviors with respect to adoption counseling following completion of the program? Provide adoption information to pregnant women on an equal basis with other pregnancy planning options? Demonstrate enhanced awareness of community adoption-related resources and refer expectant mothers to them as needed?

2. Are trainees more confident about discussing all three pregnancy planning options (parenting, abortion, and adoption) in a non-directive counseling style than they were prior to participating in the training? Cross-site evaluation data will be collected on an annual basis throughout the five-year funding period. Pre-test and follow-up versions of the survey are expected to require approximately 10 to 15 minutes to complete. Estimated response time for the follow-up survey includes time for respondents to access the web-based survey, complete the survey online, and electronically submit the survey. Respondents will not need to implement a recordkeeping system or compile source data in order to complete the survey. Where possible, fields in the follow-up version of the survey will be pre-filled with static data from the respondents pre-test (e.g., demographics, agency type) in order to further expedite completion of the survey and minimize respondent burden.

Respondents: Infant Adoption Awareness Program Trainees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
IAATP: Trainee Survey Pre-Test Administration...	1,200	1	0.15	180
IAATP: Trainee Survey Follow-Up Administration..	1,200	1	0.10	120

Estimated Total Annual Burden Hours: 300.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: October 1, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–23558 Filed 10–6–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Public Comment on the Proposed Adoption of ANA Program Policies and Procedures

AGENCY: Administration for Native Americans (ANA), HHS.

ACTION: Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures.

SUMMARY: Pursuant to Section 814 of the Native American Programs Act of 1974, as amended by 42 U.S.C. 2992b–1, the Administration for Native Americans (ANA) herein describes its proposed interpretive rules, general statements of policy and rules of agency procedure or practice in relation to the following Program Announcements: Social and Economic Development Strategies (hereinafter referred to as SEDS), Social and Economic Development Strategies for Alaska (hereinafter referred to as SEDS–AK), Native Language Preservation and Maintenance Assessment (hereinafter referred to as Native Language Assessment), Native Language Preservation and Maintenance Planning (hereinafter referred to as Native Language Planning), Native Language Preservation and Maintenance Implementation (hereinafter referred to as Native Language Implementation), Native Language Preservation and Maintenance Immersion (hereinafter referred to as Native Language Immersion), Family Preservation—Improving the Well-Being of Children Project Planning (hereinafter referred to as Family Preservation Planning), Family Preservation—Improving the Well-Being of Children Project Implementation (hereinafter referred to as Family Preservation Implementation) and Environmental Regulatory Enhancement (hereinafter referred to as ERE).

Under the statute, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy and rules of agency procedure or practice, and to give notice of the final adoption of such changes at least 30 days before the changes become effective. This notice also provides additional information about ANA's plan for administering the programs.

DATES: The deadline for receipt of comments is 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to Christopher Beach, Acting Director of Program Operations, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace 2-West, Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should be faxed to (202) 690–7441. Comments will be available for inspection by members of the public at Administration for Native Americans, Aerospace Center, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Christopher Beach at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs Act of 1974, as amended, requires ANA to provide notice of its proposed interpretive rules, general statements of policy and rules of agency organization, procedure or practice. The proposed clarifications, modifications and new text will appear in the nine ANA FY 2009 Program Announcements (PA): SEDS, SEDS–AK, Native Language Assessment, Native Language Planning, Native Language Implementation, Native Language Immersion, Family Preservation Planning, Family Preservation Implementation and ERE. This notice serves to fulfill this requirement.

Introduction: This Notice of Public Comment (NOPC) addresses two groups of changes:

- Changes made across all program areas (Part I of NOPC). Changes in Part I apply to all PAs.
- Changes made to specific program areas (Part II of NOPC). ANA has made significant changes to the SEDS, SEDS–AK, Native Language Assessment, Native Language Planning, Native Language Implementation, Native Language Immersion, Family Preservation Planning, Family Preservation Implementation, and ERE. These changes are outlined in Part II.

Note: The Environmental Mitigation program area is no longer offered through ANA. Most funds from the appropriation under 8094A of Pub. L. 103–335 were expended. A nominal amount of funding was returned to the Treasury due to low public demand for the program area.

I. All PAs will be revised to clarify program and application submission requirements for the public. These changes appear in the following sections: ANA Administrative Policies (Part A of NOPC), Definitions (Part B of NOPC) and Application Evaluation Criteria (Part C of NOPC).

(A) *ANA Administrative Policies:* Two statements will be revised to clarify ANA's policies. The first statement relates to the CFDA number and clarifies that grantees cannot be funded in more than one program area at the same time. The division of program announcements from four to nine does not impact this policy. Furthermore, the statement clarifies that grantees cannot have both a SEDS project and a Family Preservation Planning or a Family Preservation Implementation grant at the same time. The second statement relates to applications from Tribally authorized divisions.

The revised statements in the FY 2009 PA will be:

An applicant can have only one active ANA grant per CFDA number operating at any given time.

ANA will not accept applications from Tribal components that are Tribally chartered or authorized divisions of a Tribe unless the ANA application includes a Tribal resolution.

(B) *ANA Definitions:* ANA has added two new definitions and clarified the definition of two words. These new and revised definitions are provided for areas that applicants have found difficult to interpret, have previously prompted numerous questions or have created application and project development inconsistencies. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. New Definitions: The FY 2009 PA includes definitions for the following terms: contingency plan and governing body.

The FY 2009 PAs will include these new definitions:

Contingency plan: A plan that identifies specific actions to be taken in the event a specific challenge arises. The purpose of a contingency plan is to reduce the negative impacts on the project. The contingency plan should ensure that the project will be successfully completed within the proposed funding timeframe. A contingency plan is not to pre-empt challenges, but rather to address challenges if they arise.

Governing Body: A body: (1) Consisting of duly elected or designated representatives, (2) appointed by duly elected officials or (3) selected in accordance with traditional Tribal means. The body must have authority to provide service to, and to enter into contracts, agreements and grants under this part on behalf of the organization or

individuals who elected, designated, appointed or selected them in accordance with traditional Tribal means.

ii. Revised Definitions: The FY 2009 PA clarifies definitions for the following terms: leveraged resources and resolution.

The FY 2009 PA revised definitions will be:

Leveraged Resources: The non-ANA resources, as expressed as a dollar figure, acquired during the project period that support the project and exceed the 20 percent applicant match required for ANA grants. Such resources may include any natural, financial and physical resources available within the Tribe, organization or community to assist in the successful completion of the project. An example would be an organization that agrees to provide a supportive action, product, service, human or financial contribution that will add to the potential success of the project.

Resolution: Applicants are required to include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. Tribally chartered or authorized divisions must submit a Resolution from the Tribe's official governing body if the division falls under the jurisdiction of the Tribe. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution must indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any eligible matching funds (if applicable).

(C) *ANA Application Evaluation Criteria:* In order to clarify for the applicant specific information requests in the evaluation criteria, additional explanation is included for the following sub-criteria: Community Involvement in Objectives and Need for Assistance criterion; Project Strategy, Project Challenges and Contingency Planning, and Objective Work Plan in Approach criterion; and Budget Justification/Cost Effectiveness in Budget and Budget Justification criterion.

i. Community Involvement sub-criterion in Objectives and Need for Assistance criterion. A sentence was added to identify for applicants what details are needed for documentation of community meetings. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Community Involvement will be:

Community Involvement (6 points): Describe in detail how the community to be served was involved in the planning process and the origins of the project idea. Describe within the project proposal how the identified community participated in the development of the project. Demonstrate and document community and/or Tribal government support for the project. Discuss the relationship of any non-ANA-funded activities supportive of the project. Documented support is a critical element of this evaluation criterion and includes, but is not limited to, materials such as letters of support, testimonials and community meeting minutes.

Documented support should include the date and topic of the meeting and a summary of the meeting outcome.

ii. Project Strategy sub-criterion in Approach criterion. The description was expanded to clarify for applicants that the strategy should be an overview of the Objective Work Plan and that the applicants should clearly identify how the proposed project is different from similar, previously ANA-funded projects. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Project Strategy will be:

Project Strategy (10 points): Present a narrative on the project strategy and implementation plan (Objective Work Plan—see below) for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals. Discuss how the current proposed project differs from previously ANA-funded projects, which may be similar in nature to the current proposed project.

iii. Project Challenges and Contingency Planning in Approach criterion. The description was expanded to clarify for applicants what ANA is requesting in a contingency plan. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Project Challenges and Contingency Planning will be:

Project Challenges and Contingency Planning (5 points): Based on ANA's project funding history and information gathered from project impact evaluations, ANA has determined that all projects encounter challenges and therefore need to have a contingency plan should a significant challenge arise. Challenges can arise because applicants make assumptions about critical events, conditions and/or decision outside of the control of project management. The applicant needs to identify challenges that may arise during the project's initial start up and throughout the project period. Consider such challenges as difficulty hiring and retaining key staff, difficulty recruiting community members and/or volunteers for project activities, difficulty recruiting target audience (e.g., students, children, elders), difficulty securing agreed-upon support from partners to provide services/funding, planning shortfalls, possible disruption of the project timeline due to Tribal elections and difficulty securing permits or licensing from government entities. Identify potential challenges and explain the contingency plans (see Definitions) that will be implemented to overcome those challenges. The contingency plan should ensure that the project will be successfully completed within the proposed funding timeframe. A contingency plan is not to pre-empt challenges, but rather to address challenges if they arise.

iv. Objective Work Plan sub-criterion in Approach criterion. The description was expanded to clarify for applicants the instructions for completing the OWP form (OMB Control No. 0980–0204). (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Project Strategy will be:

Objective Work Plan (20 points): The ANA Objective Work Plan (OWP) form is the blueprint for the project. The OWP provides detailed descriptions of the project goal, the project objectives, supporting activities and the results and benefits to be expected. It provides the what, how, when, where and by whom of the project. As such, it is a stand-alone document that should provide sufficient information for an application reviewer, ANA staff or a project manager to understand the project and how it will be implemented. The OWP is the basis for reporting on the project.

A project cannot exceed three objectives per project period. Complete an ANA OWP form for each objective per budget period. If submitting an electronic application, some objectives will require more than one form. In addition, some objectives may last more than one budget period. Ensure that the

objective is correctly stated in the OWP, the project narrative and on the ANA Abstract form.

The objective statement should contain the following basic elements: what will be accomplished during the project period and when it will be accomplished. Each objective should be Specific, Measurable, Achievable, Results-oriented and Time-bound (SMART).

For each objective, list activities that provide a road map to achieve the objective. Each activity is a step in the logical progression of the project. Include specific and significant activities (e.g., hiring staff, developing first draft), ongoing activities (e.g., meetings and classes), the type of activity (e.g., workshops, retreats and seminars), the type of audience, the submission of required ANA reports and attendance at ANA post-award training. Especially useful are activities that show progress and/or results on a quarterly basis. Explain how the activities outlined in the OWP will lead to the successful achievement of the project objectives and goal.

Identify the position responsible for the completion of each activity by identifying the title(s) of the salaried project staff person(s). Identify time periods that are realistic to complete each activity. Use elapsed times from the start of the project (e.g., month 1, month 2) rather than absolute dates. September 30 is the start date for each budget period. Identify the non-salary personnel hours, including non-salaried contributors (paid or in-kind) to the project. List hours according to who is providing them (e.g., Committee person—10 hours; ABC Consultant—5 hours). Provide supporting documentation for the hours listed in this column.

The preceding instructions are recommended for the OWP form found on the ANA Web site *http://www.acf.hhs.gov/programs/ana/,* which can be added as an attachment to an application on *http://www.grants.gov.* This form allows for an unlimited number of activities and characters so applicants can adequately communicate the project plan. For applicants using the form in *http://www.grants.gov,* note that each objective is limited to eight activities and each section has a limitation of 180 characters, which may not allow the applicant enough space to adequately communicate the project plan. Furthermore, those applicants that use *http://www.grants.gov* must use absolute dates for timeframe and can identify the source of the non-salaried personnel hours in the narrative. Therefore, it is recommended that applicants use the OWP available on the ANA Web site and attach the completed OWP to the *http://www.grants.gov* submission.

The results and benefits section of the OWP is used to track the grantee's quarterly progress of accomplishing an individual objective and should be broken down by quarter. The results and benefits must directly relate to the activities that support the accomplishment of an objective in the OWP. The results and benefits are used to monitor the project's quarterly progress and must include target numbers. The criteria for evaluating the results and benefits expected are of the applicant's choosing and need to be documented and verifiable.

v. Budget Justification/Cost Effectiveness sub-criterion in Budget and Budget Justification criterion. The first paragraph was expanded to clarify for applicants that a separate justification is requested for each budget period. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new first paragraph text for the FY 2009 PA Project Strategy will be:

Budget Justification/Cost Effectiveness (10 points): Submit justification narratives that support and align with the Federal and applicant match requirement. A budget justification narrative must be submitted for each budget period. The justification should identify how the calculations for each of the line items were developed and explain how they are important to the project. Include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

II. *ANA FY 2009 Program Specific Changes.* ANA FY 2009 PAs will be revised to break down Program subcategories into a stand-alone PA. ANA is developing individual PAs to comply with new guidance established by the Administration for Children and Families. Therefore, in FY 2009 ANA will publish nine PAs. Furthermore, to support this new requirement for separate PAs, it is necessary that ANA make additional programmatic changes to support and clarify each new PA.

(A) *ANA Native Language Preservation and Maintenance:* The former PA, Native Language Preservation and Maintenance, included all four separate program categories under one PA; namely, Native Language Preservation and Maintenance Assessment (hereinafter referred to as Native Language Assessment), Native Language Preservation and Maintenance Planning (hereinafter referred to as Native Language Planning), Native Language Preservation and Maintenance Implementation (hereinafter referred to as Native Language Implementation), Native Language Preservation and Maintenance Immersion (hereinafter referred to as Native Language Immersion). Except for where noted in this notice, these four PAs are the same as the 2008 Native Languages PA, but in order to clarify submission requirements and program areas for the public, ANA will now release each category as a separate PA. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

i. Native Language Assessment. The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. The Priority Area Description was revised to include analysis in language assessment. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Assessment program area. Native Language Assessment grants are used to conduct the assessments necessary to identify the current status of the Native American language(s) to be addressed.

2. Funding Opportunity Description

Paragraphs seven and eight of the Funding Opportunity Description for the FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

The ANA Native Language program areas of interest are projects that ANA considers supportive to Native American communities. Funding is not restricted to projects of the type listed in this program announcement.

3. Priority Area Description

The Priority Area Description for the FY 2009 PA will be:

The purpose of a Native Language Assessment project is to conduct an assessment of the current status of the Native language(s) within an established community. The program area of interest is:

• A project that compiles, collects, analyzes and organizes Native language data in order to have a current description of the community's language status obtained through a ''formal'' method (e.g., work performed by a linguist and/or a language survey conducted by community members) or an ''informal method'' (e.g., a community consensus of the language status based on elders, Tribal scholars and/or other community members).

ii. Native Language Planning. The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. The Priority Area Description was revised to include all areas of language program planning. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Planning program area. Native Language Planning grants are used to plan a language project.

2. Funding Opportunity Description

Paragraphs seven and eight of the Funding Opportunity Description for FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

The ANA Native Language program areas of interest are projects that ANA considers supportive to Native American communities. Funding is not restricted to projects of the type listed in this program announcement.

3. Priority Area Description

The Priority Area Description for FY 2009 PA will be:

The purpose of a Native Language Planning project is to encourage Tribes and Native organizations to plan and design Native language projects. Applicants are encouraged to develop a project that results in a comprehensive plan to preserve the Native language that uses current community language assessment data, reviews innovative methods that bring older and younger Native Americans together to teach and learn the language, and considers all essential elements needed to sustain and implement a language project. Planning projects are for planning and design only, and do not include activities that call for direct language learning or instruction. Testing of any material and curriculum developed is limited to a maximum of five students. Program areas of interest include:

• Projects to plan and design Master/Apprentice programs;

• Projects to plan and design comprehensive Native language immersion programs for a language nest or survival school;

• Projects that plan, design and test curriculum for students, parents and language instructors;

• Projects that plan and design teaching materials;

• Projects to record, transcribe and archive oral testimony;

• Projects to plan and design language resource materials using recorded oral testimony;

• Projects that plan and design multi-media language learning tools;

• Projects that plan and design teacher certification programs;

• Projects to train teachers, interpreters or translators of Native languages.

iii. Native Language Implementation. The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. The Priority Area Description was revised to identify all areas of language program implementation. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Implementation program area. Native Language Implementation grants are used to implement a preservation language project that will contribute to the achievement of the community's long-range language goal(s).

2. Funding Opportunity Description

Paragraphs seven and eight of the Funding Opportunity Description for FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

The ANA Native Language program areas of interest are projects that ANA considers supportive to Native American communities. Funding is not restricted to projects of the type listed in this program announcement.

3. Priority Area Description

The Priority Area Description for FY 2009 PA will be:

The purpose of Native Language Implementation grants is to provide support to Tribes and Native organizations in the implementation of a Native language project to achieve the community's long-range language goal(s). Program areas of interest include:

• Projects to produce and disseminate culturally relevant printed stories for children using the Native language of the community;

• Projects to facilitate and encourage intergenerational teaching of Native American language skills;

• Projects to disseminate culturally relevant materials to be used to teach and enhance the use of Native American languages;

• Projects to implement an immersion, mentor or distance learning model;

• Projects to produce, distribute or participate in television, radio or other media forms to broadcast Native languages;

• Projects to implement an educational site-based immersion project.

iv. Native Language Immersion. The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. Furthermore, in order to clearly identify the certification that is required at the

time of application submission, a definition of certification was added and statements about the certification were included in the following sections: Forms, Assurances and Certifications, Program Areas of Interest and Organizational Profiles evaluation criterion. In addition, the weighted scores for the sub-criterion found in the Organizational Profiles evaluation criterion were changed to highlight the importance of the certification. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Immersion program area. Native Language Immersion grants will only be awarded to applicants that meet the Statutory requirements for immersion projects with language nests or language survival schools in accordance with Pub. L. 109–394.

2. Funding Opportunity Description.

To clarify the new PAs for language, paragraphs seven and eight were changed.

Paragraphs seven and eight of the Funding Opportunity Description for FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

For the ANA Native Language Preservation and Maintenance Immersion program areas of interest, applicants must abide by the parameters established by Pub. L. 109–394.

3. Administrative Policies

An additional Administrative Policy will be added to FY 2009 PA:

Upon application submission, a certification is required that the applicant has not less than three years of experience in operating and administering a Native American language survival school, Native American language nest, or any other educational program in which instruction is conducted in a Native American language.

4. Definitions

An additional Definition will be added to FY 2009 PA:

Certification: A document on letterhead signed by the applicant that shows the applicant has not less than three years of experience in operating and administering a Native American language survival school, Native American language nest or any other educational program in which instruction is conducted in a Native American language. This document is required by statue in order to consider an applicant eligible for competition in this program area.

5. Program Area of Interest

An additional instruction will be included at the end of Program Area of Interest description in the FY 2009 PA:

A certification needs to be included by the applicant (please see certification definition).

6. Forms, Assurances and Certifications

The instruction for the FY 2009 PA on certification required for Native Languages—Immersion projects will be:

The applicant must provide a certification by the applicant that the applicant has not less than three years of experience in operating and administering a Native American language survival school, Native American language nest or any other educational program in which instruction is conducted in a Native American language.

7. Evaluation Criteria—Organizational Profiles

The FY 2009 PA Organizational Profiles criterion will be:

ORGANIZATIONAL PROFILES—17 Points

Organizational Capacity: This criterion will be evaluated to the extent the applicant demonstrates their organizational capacity and ability to staff and implement the proposed project.

Organizational Capacity (6 points): Provide information on the management structure of the applicant, such as personnel and financial policies. Describe the administrative structure of the applicant and the systems used to track the funding and progress of the project. Demonstrate the applicant's capacity and ability to administer and implement a project of the proposed scope. Include an organizational chart that indicates where the ANA project will fit in the existing administrative structure.

List all sources of Federal funding the applicant currently oversees. Include information on the funding agency, purpose of the funding and amount. Provide the most recent certified signed audit letter for the organization. If the applicant has audit exceptions, these issues should be discussed within this criterion, detailing any steps taken to overcome the exceptions.

Applicants are required to affirm that they will credit ANA and reference the ANA-funded project on any audio, video and/or printed materials developed in whole or in part with ANA funds.

A consortium applicant must identify the consortium membership and describe their roles and responsibilities. One member of the consortium must be the recipient of the ANA funds. A consortium applicant must be an eligible entity as defined by this program announcement and the ANA regulations.

Include documentation signed by the membership supporting the ANA application. ANA will not fund activities by a consortium of Tribes that duplicate activities for which member Tribes also receive funding from ANA. Include a copy of the consortia legal agreement or memorandum of agreement.

List all of the applicant's current and existing partners that will be providing support to the project's implementation. Include information on the current organizational relationship between the applicant and partner. The experience and expertise of these partners must align with the activities stated in the OWP that they will be supporting. This information should state the nature, amount and conditions under which another agency, organization or individual will support a project funded by ANA.

Certification (6 points): Applicants applying for a Native Language Immersion grant must include the certification at the time the application is submitted for consideration. Applications will be reviewed to the extent that the following area specific wording is included on their Certification:

Native American Language Nest Certification

The (Name of Applicant) is seeking funding from the Administration for Native Americans (ANA) under Native Language Preservation and Maintenance Immersion program for a site-based

''Language Nest.'' In accordance with Pub. L. 109–394, (Name of Applicant) certifies that it:

(1) Provides instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student; and

(2) Provides classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents); and

(3) Ensures that a Native American language is the dominant medium of instruction in the Native American language nest; and

(4) The applicant has not less than three years of experience in operating and administering a Native American language nest.

Certification for a Native American language nest should include all four requirements, be on letterhead and be signed by the applicant.

Native American Language Survival School Certification

The (Name of Applicant) is seeking funding from the Administration for Native Americans (ANA) under Native Language Preservation and Maintenance Immersion program for a site-based survival school. In accordance with Pub. L. 109–394, (Name of Applicant) certifies that it:

(1) Provides an average of at least 500 hours of instruction through the use of one or more Native American languages for at least 15 students for whom a Native American survival school is their principal place of instruction; and

(2) Develops instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages; and

(3) Provides for teacher training fluency in a Native American language and academic proficiency in mathematics, reading (or language arts) and science; and

(4) Is located in areas that have high numbers or percentages of Native American students; and

(5) The applicant has not less than three years of experience in operating and administering a Native American language survival school.

Certification for a Native American language survival school should include all five requirements, be on letterhead and be signed by the applicant.

Project Staffing Plan (5 points): Provide staffing and position data that includes a proposed staffing pattern for the project. Describe the process and general timeframe to hire staff (such as advertising or recruiting from within the community). Explain how the current and future staff will manage the proposed project. Full project position descriptions are required to be submitted as an attachment. Brief biographies and/or resumes of identified key positions or individuals will be included as an attachment. Project positions discussed in this section must match the positions identified in the OWP and in the itemized budget. Note: Applicants are strongly encouraged to give preference to qualified Native Americans, in accordance with applicable laws, in hiring project staff and in contracting services under an approved ANA grant.

(B) *Family Preservation—Improving the Well-Being of Children:* In FY 2009, Family Preservation—Improving the Well-Being of Children (hereinafter referred to as Family Preservation) program area will replace the Native American Healthy Marriage Initiative program area. This action was taken to broaden the ANA Native American Healthy Marriage Initiative to include other children and family projects. In addition, as per the Administration for Children and Families requirement, two PAs will be published for FY2009. The PAs reflect the two types of projects, project planning and project implementation. The changes identified below are to clearly identify the expanded scope of these program areas and separate the planning and implementation project categories. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. Family Preservation—Project Planning.

a. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for projects that plan for approaches to improve child well-being by removing barriers associated with strengthening families (including fatherhood, parenting, foster parenting, grandparents raising grandchildren and absentee parent activities), forming and preserving healthy families, relationships and marriages (including Traditional Native American and Pacific Basin marriages) and sustaining healthy families, relationships and marriages in Native American and Pacific Basin communities. ANA's FY 2009 goals and program areas of interest are focused on strengthening children, families and communities through financial assistance to community-based organizations including faith-based organizations, Tribes and Village governments.

The goals of the ANA Family Preservation PA is to increase the well-being of children through family preservation activities; increase the percentage of children who are raised in a healthy environment free of child abuse and neglect; increase the percentage of youth and young adults who have the skills and knowledge to make informed decisions about healthy relationships; increase the percentage of couples who are equipped with the skills and knowledge necessary to form and sustain healthy relationships and marriages; increase the percentage of children who are raised by two parents in a healthy family environment that is also free of domestic violence; increase the percentage of involvement by absentee parents in the lives of their children, increase public awareness in communities about the value of healthy families, relationships, marriages and responsible fatherhood and encourage and support research on healthy families, relationships and marriages and healthy marriage education.

b. Funding Opportunity Description

The FY 2009 PA Funding Opportunity Description will be:

This program announcement specifically promotes planning culturally competent strategies for strengthening families, fostering child well-being, healthy relationships and marriages and responsible fatherhood to preserve healthy families within the Native American and Pacific Basin Communities.

This program announcement seeks to fund projects that engage in the planning of approaches to remove barriers to forming lasting families, healthy relationships and healthy marriages in Native American and Pacific Basin communities. Projects funded under this program announcement will include activities that design and engage in a community planning process that identifies barriers to forming healthy families, relationships and marriages (including Traditional Native American and Pacific Basin marriages); assesses the needs and interest of the community to participate in a family strengthening project; assesses existing absentee parenting programs, fatherhood programs, grandparents raising grandchildren programs, and foster parent programs; identifies strategies to implement a

family strengthening project; plans and develops curricula for family strengthening programs; and develops projects that are designed to reduce or eliminate the challenges and barriers identified by the community.

c. Priority Area Description

The FY 2009 PA Priority Area Description will be:

The purpose of a planning project is to engage in a community-based planning process that assesses the current status of available resources and barriers to family preservation, healthy relationships, healthy marriages and child well-being within an established Native American or Pacific Basin community. Applicants are encouraged to develop a project that results in a comprehensive plan that includes a community assessment of the challenges and barriers that negatively impact families, child well-being, relationships, marriages and parenting within Native American and Pacific Basin communities; identifies resources and partnerships; and develops a strategy to help sustain healthy families, relationships, marriages and responsible fatherhood within Native American and Pacific Basin communities. Eligibility for funding is restricted to projects of the type listed in this program announcement. Project Planning is for planning and design of projects only.

Applicants may only choose one or more program areas of interest from the list below:

Healthy Marriage:

Projects that develop a:

- Curriculum focused on pre-marital and marital education.
- Plan to provide youth education in high schools, youth organizations and community centers on the value of healthy relationships and marriages. This can include education on healthy relationship skills including conflict resolution, communication and commitment. Projects should use a pre-marital education focused on youth.
- Plan to offer marriage education and marriage skills, which may include relationship skills, communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.
- Plan to offer pre-marital education and marriage skills training for couples, individuals or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (communication, conflict resolution, commitment) necessary to choose marriage for themselves if they so desire.
- Plan to provide marriage enhancement/enrichment and marriage skills training programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.
- Plan to use married couples as role models and mentors in at-risk communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.
- Plan to conduct research on the benefits of healthy relationships and marriages and healthy relationship and marriage education.
- Plan to provide public advertising campaigns in Native American and Pacific Basin communities on the value of healthy relationships and marriage as a way to improve relationships and marriages and strengthen family relationships.

Family Strengthening/Preservation:

Projects that develop a:

- Curriculum focused on responsible fatherhood and family preservation education (including parenting, foster parenting, grandparents raising grandchildren and absentee parent activities).
- Plan to provide youth education in high schools, youth organizations and community centers on the value of responsible fatherhood and family preservation.
- Plan to offer services to fathers to help them overcome barriers to positive involvement in their children's lives.
- Plan to offer education and activities focused on Responsible Fatherhood and Parenting.
- Plan to offer family preservation activities in a culturally appropriate and traditional manner within Native American and Pacific Basin communities.
- Plan to offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement and also promote the value and importance of healthy families.
- Plan to offer education on communication and conflict resolution for absentee parents to improve the custodial and non-custodial parental relationship and increase absentee parents' involvement in their children's lives.
- Plan to reduce child/infant abuse and neglect and family domestic violence.
- Plan to address the needs of grandparents raising grandchildren.
- Plan to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected and abandoned Native American children, youth and their families.
- Plan to target family strengthening services to individuals with substance abuse issues as a way to support a strong healthy family environment.
- Plan to provide public advertising campaigns in Native American and Pacific Basin communities on the value of parental involvement, family preservation and responsible fatherhood as a way to strengthen family relationships.

d. Funding Restrictions

The following funding restriction will be added to the FY 2009 PA:

Counseling or therapeutic activities that are medically based.

e. Evaluation Criteria. Changes were made to the Approach evaluation criterion, specifically Project Strategy sub-criterion and Objective Work Plan sub-criterion.

The FY 2009 PA Project Strategy sub-criterion will be:

Project Strategy (10 points): Present a narrative on the project strategy and implementation plan (Objective Work Plan—see below*) for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals. Discuss how the current proposed project differs from previously ANA-funded projects which may be similar in nature to the current proposed project.

- See section I.C.iv Objective Work Plan sub-criterion on Approach Criterion in this Notice Of Public Comment for the Objective Work Plan Instructions.

The FY 2009 PA Objective Work Plan sub-criterion will have the following text added:

If planning a project focused on healthy relationships, healthy marriages or fatherhood, include an activity to plan and design the Domestic Violence Protocol (see Definitions) the proposed project will use to identify and provide

appropriate referral or services for individuals or couples where violence may be occurring.

ii. Family Preservation—Implementation Projects

a. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for projects that implement approaches to improve child well-being by removing barriers associated with strengthening families (including fatherhood, foster parenting, absentee parent activities and grandparents raising grandchildren), forming and preserving healthy families, relationships and marriages (including Traditional Native American and Pacific Basin marriages). ANA's FY 2009 goals and program areas of interest are focused on strengthening children, families and communities through financial assistance to community-based organizations including faith-based organizations, Tribes and Village governments.

The goal of the ANA Family Preservation PA is to increase the well-being of children through family preservation activities; increase the percentage of children who are raised in a healthy environment free of child abuse and neglect; increase the percentage of youth and young adults who have the skills and knowledge to make informed decisions about healthy relationships; increase the percentage of couples who are equipped with the skills and knowledge necessary to form and sustain healthy relationships and marriages; increase the percentage of children who are raised by two parents in a healthy family environment that is also free of domestic violence; increase the percentage of involvement by absentee parents in the lives of their children, increase public awareness in communities about the value of healthy families, relationships, marriages and responsible fatherhood; and encourage and support research on healthy families, relationships and marriages and healthy marriage education.

b. Funding Opportunity Description

The FY 2009 PA Funding Opportunity Description will be:

This program announcement specifically promotes implementing culturally competent strategies for strengthening families, fostering child well-being, healthy relationships and marriages, and responsible fatherhood to preserve healthy families within the Native American and Pacific Basin communities.

This program announcement seeks to fund projects that engage in the implementation of approaches to remove barriers to forming lasting families and healthy relationships and marriages in Native American and Pacific Basin communities. Projects funded under this program announcement will include activities that provide community resources such as family strengthening programs (fatherhood, parenting, absentee parental involvement, foster parenting and grandparents raising grandchildren); healthy relationships; healthy marriages (including Traditional Native American and Pacific Basin marriages); marriage education/enrichment training; pre-marital education; relationship skills education on communication, conflict resolution and commitment; and other support activities such as family outings, family strengthening groups, and weekend pre-marital/marital education and family retreats.

c. Priority Area Description

The FY 2009 PA Priority Area Description will be:

Family Preservation—Improving the Well-Being of Children Project Implementation

The purpose of an implementation project is to support a community-based project focused on family preservation, healthy relationships, marriage, parenting, foster parenting, grandparents raising grandchildren, fatherhood and absentee parent involvement in Native American and Pacific Basin communities. ANA will not fund curriculum development in an implementation project. Minor text and/or activity modification to existing curricula to make the curricula community-appropriate will be allowed in the first two months of an implementation project. Eligibility for funding is restricted to projects of the type listed in this program announcement. Project Implementation is for implementation of projects only.

Applicants may only choose one or more program areas of interest from the list below:

Healthy Marriage:

- Projects that provide youth education in high schools, youth organizations and community centers on the value of healthy relationships and marriages. This can include education on healthy relationship skills, including conflict resolution, communication and commitment. Projects should use a pre-marital education focused on youth.
- Projects that offer marriage education and marriage skills, that may include relationship skills, communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.
- Projects that offer pre-marital education and marriage skills training for couples, individuals or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (communication, conflict resolution, commitment) necessary to choose marriage for themselves if they so desire.
- Projects that provide marriage enhancement/enrichment and marriage skills training programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.
- Projects that use married couples as role models and mentors in at-risk communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.
- Projects that conduct research on the benefits of healthy relationships and marriages and healthy relationship and marriage education.
- Projects that provide public advertising campaigns in Native American, and Pacific Basin communities on the value of healthy relationships and marriage as a way to improve relationships and marriages and strengthen family relationships.

Family Strengthening/Preservation:

- Projects that provide youth education in high schools, youth organizations and community centers on the value of responsible fatherhood and family preservation.
- Projects that offer services to fathers to help them overcome the barriers to positive involvement in their children's lives.
- Projects that offer education and activities focused on Responsible Fatherhood and Parenting.
- Projects that offer family preservation activities in a culturally appropriate and traditional manner within Native American and Pacific Basin communities.

• Projects that offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement, and also promote the value and importance of healthy families.

• Projects that offer education on communication and conflict resolution for absentee parents to improve the custodial and non-custodial parental relationship and increase absentee parents' involvement in their children's lives.

• Projects to reduce child/infant abuse and neglect and family domestic violence.

• Projects that address the needs of grandparents raising grandchildren.

• Projects to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected, and abandoned Native American children, youth and their families.

• Projects that target family strengthening services to individuals with substance abuse issues as a way to support a strong healthy family environment.

• Projects that provide public advertising campaigns in Native American, and Pacific Basin communities on the value of parental involvement, family preservation and responsible fatherhood as a way to strengthen family relationships.

d. Funding Restrictions

The following funding restriction will be added to the FY 2009 PA:

Counseling or therapeutic activities that are medically based.

e. Evaluation Criteria

Changes were made to the Approach evaluation criterion, Project Strategy sub-criterion and Organizational Profiles, Project Staffing sub-criterion.

The FY 2009 PA Project Strategy sub-criterion will be:

Project Strategy (10 points): Present a narrative on the project strategy and implementation plan (Objective Work Plan—see below*) for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals. Discuss how the current proposed project differs from previously ANA funded projects which may be similar in nature to the current proposed project.

Applicants should provide information on the curricula they will be utilizing within their project and how it is community appropriate to the project. ANA will not fund curriculum development in an implementation grant. Minor text and/or activity modification to existing curricula to make the curricula community-appropriate will be allowed in the first two months of an implementation project.

Applicants are required to discuss the Domestic Violence Protocol (see Definitions) that the proposed project will use to identify and provide appropriate referral or services for individuals or couples where violence is occurring if implementing a project focused on healthy relationships, healthy marriages or fatherhood. Applicants should be able to demonstrate knowledge of the information and services provided by domestic violence coalitions within the community.

* See section I.C.iv Objective Work Plan sub-criterion on Approach Criterion in this Notice Of Public Comment for the Objective Work Plan Instructions.

The FY 2009 PA Project Staffing Plan sub-criterion will be:

Project Staffing Plan (5 points): Provide staffing and position data that includes a proposed staffing pattern for the project. Describe the process and general timeframe to hire staff (such as advertising or recruiting from within the community). Explain how the current and future staff will manage the proposed project. Full project position descriptions are required to be submitted as an attachment. Brief biographies and/or resumes of identified key positions or individuals will be included as an attachment. Project positions discussed in this section must match the positions identified in the OWP and in the itemized budget. Note: Applicants are strongly encouraged to give preference to qualified Native Americans, in accordance with applicable laws, in hiring project staff and in contracting services under an approved ANA grant. Applicants should state any required training they will need in order to be certified in a particular curriculum. Certification should occur within the first two months of an implementation project.

(C) *ANA SEDS:* ANA FY 2009 PAs were revised from FY 2008 to split categories into separate PAs, according to Administration for Children and Families requirements. Therefore, ANA will publish two PAs, namely Social and Economic Development Strategies (hereinafter referred to as SEDS) and Social and Economic Development Strategies for Alaska (hereinafter referred to as SEDS–AK). (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. SEDS. The Priority Area Descriptions for social projects were changed. The priority areas focused on family preservation have been moved to the Family Preservation program area, see previous section. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

Priority Area Description for Social Development

The FY 2009 PA Priority Area Description for Social Development Projects removes the following bullets:

• Projects to reduce child/infant abuse and neglect and family domestic violence.

• Projects that address the needs of grandparents raising grandchildren.

• Projects to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected and abandoned Native American children, youth and their families.

ii. SEDS–AK. The Executive Summary has been changed to reflect the new PA for SEDS–AK. A priority area for economic development projects was added addressing traditional energy activities. Three Priority Areas for social projects were removed to reflect their movement to the Family Preservation and Children program area, see previous section. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based projects under the ANA Social and Economic Development Strategies for Alaska (SEDS–AK) program. ANA's FY 2009 SEDS–AK goals and program areas of interest are focused on strengthening children, families and communities

through community-based organizations, Tribes and Village governments. The purpose of ANA is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, Alaskan Natives and other Native American Pacific Islanders, including American Samoa Natives.

2. Priority Area Description for Economic Development

The FY2009 PA Priority Area Description for Economic Development Projects adds the following bullet:

- Projects to promote traditional energy activities and practices that support conservation and help to mitigate the high costs associated with the purchase, transportation, and storage of fuel in remote Alaskan Villages.

3. Priority Area Description for Social Development

The FY 2009 PA Priority Area Description for Social Development Projects removes the following bullets:

- Projects to reduce child/infant abuse and neglect and family domestic violence.
- Projects that address the needs of grandparents raising grandchildren.
- Projects to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected and abandoned Native American children, youth and their families.

(D) *ANA ERE:* The FY 2009 PA includes an additional instruction in the Approach evaluation criterion, Project Strategy sub-criterion. This change reflects the need for additional information related to the land area and natural resources over which the applicant has jurisdiction. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

The FY 2009 PA Approach evaluation criterion, Project Strategy sub-criterion will have the following statement added:

Applicants are required to describe a land base or other resources, e.g., river or body of water, over which they exercise jurisdiction to implement Tribal regulation of environmental quality. Maps and photos of the area are encouraged.

Dated: September 30, 2008.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. E8–23662 Filed 10–6–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–F–0518]

Anitox; Filing of Food Additive Petition (Animal Use); Formaldehyde

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Anitox has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formaldehyde to retard the growth of *Clostridium perfringens* in animal feeds.

DATES: Submit written or electronic comments on the petitioner's environmental assessment December 8, 2008.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, e-mail: *isabel.pocurull@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2259) has been filed by Anitox, 1055 Progress Circle, Lawrenceville, GA 30043. The petition proposes to amend the food additive regulations in part 573—Food Additives Permitted in Feed and Drinking Water of Animals (21 CFR part 573) to provide for the safe use of formaldehyde to retard the growth of *Clostridium perfringens* in animal feeds.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: September 29, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–23723 Filed 10–6–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of September 24, 2008 (73 FR 55114). The document announced a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). A portion of the meeting will be closed to the public. This document corrects the error.

FOR FURTHER INFORMATION CONTACT: Theresa Green, Office of the Commissioner, Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: In FR Doc. E8–22437, appearing on page 55114 in the **Federal Register** of Wednesday, September 24, 2008, the following correction is made:

1. On page 55114, in the third column, in the *Procedure* section, the fourth sentence is corrected to read ''Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m.''

There are no other changes to the document.

Dated: October 1, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–23718 Filed 10–6–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0525]

Draft Guidance for Industry on New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products.'' As part of the Medical Device User Fee Amendments of 2007 (MDUFA) Commitment for the Performance Goals and Procedures, FDA agreed to publish draft guidance by September 30, 2008, for medical imaging devices with ''contrast agents or radiopharmaceuticals.'' FDA intends this draft guidance to assist developers of medical imaging devices and imaging drug/biological products that provide image contrast enhancement. Particularly this guidance focuses on approaches in developing new contrast indications for imaging devices for use with already approved imaging products. FDA intends for the recommendations in this guidance to promote timely and effective review of, and consistent and appropriate regulation and labeling for imaging drugs and devices.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 5, 2009.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Patricia Y. Love, Office of Combination Products (HFG–3), Office of the Commissioner, Food and Drug Administration, 15800 Crabbs Branch Way, Rockville, MD 20855, 301–427–1934.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products.'' This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 have been approved under 0910–0120. The collections of information in 21 CFR part 814 have been approved under 0910–0231. The collections of information in 21 CFR part 314 have been approved under 0910–0001.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: September 29, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–23712 Filed 10–6–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0281]

Pilot Program To Evaluate Proposed Name Submissions; Concept Paper

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a concept paper entitled ''PDUFA Pilot Project Proprietary Name Review.'' The concept paper provides information to pharmaceutical firms about how to evaluate proposed propriety names and submit the data generated from those evaluations to FDA for review under an anticipated pilot program. FDA plans to begin enrollment in the pilot program in fiscal year (FY) 2009.

DATES: Submit written or electronic comments on the pilot program at any time.

ADDRESSES: Submit written requests for single copies of the concept paper to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD, 20852–1448. The concept paper may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the pilot program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See **I. BACKGROUND** of the **SUPPLEMENTARY INFORMATION** section for electronic access to the concept paper.

FOR FURTHER INFORMATION CONTACT:

Lana Pauls, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg, 51, rm. 6196, Silver Spring, MD 20993, 301–796–0518, FAX: 301–847–8753, e-mail: *lana.pauls@fda.hhs.gov*, or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17),Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In its 2006 report ''Preventing Medication Errors,'' the Institute of Medicine noted that ''[i]n particular, drug names that look or sound alike increase the risk of medication errors.'' FDA also has determined that many of the medication errors reported to the agency result from proprietary names that look or sound like the names of other medical products. Reducing the potential for medication errors due to proprietary name confusion is part of FDA's ongoing medical product risk management effort. In 2003, FDA held two public meetings that explored many of the issues involved in proprietary name review:

- The June 26, 2003, public meeting on ''Minimizing Medication Errors—Methods for Evaluating Proprietary Names for Their Confusion Potential,''(Docket No. 2002N–0201) (68 FR 32529; May 30, 2003); information about the meeting is available at *http://www.fda.gov/cder/meeting/drugNaming.htm*.
- The December 4, 2003, meeting of the Drug Safety and Risk Management Advisory Committee (68 FR 65075; November 18, 2003); transcripts, presentations, and materials from the meeting are available at *http://www.fda.gov/ohrms/dockets/ac/cder03.html#DrugSafetyRiskManagement*.
- On June 5 and 6, 2008, FDA held a public technical meeting to discuss a draft concept paper (see meeting notice at 73 FR 27001; May 12, 2008) describing the pilot and FDA's thinking about how pharmaceutical firms could participate in the pilot to evaluate proposed proprietary names and submit the data generated to FDA for review. Transcripts, presentations, and materials from the meeting are available at *http://www.fda.gov/cder/drug/MedErrors/meeting_2008.htm*.

In title I of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85), Congress reauthorized and expanded the Prescription Drug User Fee program for FYs 2008 to 2012 (PDUFA IV). As part of the performance goals and procedures set forth in an enclosure to the letter from the Secretary of the Health and Human Services referred to in section 101(c) of FDAAA, FDA agreed to publish a concept paper on and implement a pilot program to enable pharmaceutical firms participating in the pilot to evaluate proposed proprietary names and submit the data generated from those evaluations to FDA for review. This process is consistent with other areas of drug review in which FDA evaluates data generated by firms rather than producing such data independently. FDA agreed to conduct a public meeting to discuss the content of the concept paper, which describes the logistics of the pilot program, proposed recommendations for carrying out a proprietary name review, and the way FDA intends to review submissions made under the pilot program. FDA issued the draft concept paper for discussion at the June 5 and 6, 2008, meeting, and after considering comments received at the meeting and to the public docket, FDA finalized the concept paper. Changes made to the final concept were editorial and primarily clarifying. There were two substantive changes: (1) Participation in the portion of the pilot addressing review of promotional aspects of proposed proprietary names has been made optional for applicants who choose to participate in the pilot, so that they may choose to submit only safety-related assessments and (2) additional information has been provided to explain how the agency recommends reviews be undertaken for names intended for over-the-counter drugs.

FDA expects to begin enrollment into the pilot program no later than the end of FY 2009. At the end of FY 2011, or subsequent to accruing 2 years of experience with pilot program submissions, FDA intends to evaluate the pilot program to determine whether to have applicants perform their own name analysis and submit resulting data to FDA for review. The results of this pilot program and recommended additions and/or changes to methods based on the reported results will be discussed in a future public meeting. Following that meeting, a draft guidance will be published describing the best test methods for proprietary name evaluation.

II. Comments

FDA welcomes suggestions for and comments regarding the pilot program. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the pilot program. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: October 1, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–23715 Filed 10–6–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–P–0474] (formerly Docket No. 2004P–0262)

Withdrawal of Approval of 128 Suitability Petitions; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of February 23, 2007 (72 FR 8184). The notice announced that FDA was withdrawing approval of 128 suitability petitions in accordance with the Pediatric Research Equity Act of 2003 (PREA). FDA has determined that approval of the suitability petition submitted by Roxane Laboratories, Inc. (Roxane), for lorazepam oral solution, 1 milligram (mg)/10 milliliters (mL) (Docket No. FDA–1994–P–0017),[1] should not have been withdrawn and therefore retroactively reinstates its approval of that petition. This document also corrects errors in the petition numbers for two of the suitability petitions listed in the notice.

FOR FURTHER INFORMATION CONTACT: Cecelia M. Parise,Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration,5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 2007 (72 FR 8184), FDA announced that it was withdrawing approval of 128 suitability petitions in accordance with PREA. Prior to PREA's enactment, FDA had approved these suitability petitions to permit abbreviated new drug applications (ANDAs) to be submitted for drugs that had a different active ingredient, dosage form, or route of administration than their reference listed drugs. In the notice, FDA explained that the approval of these suitability petitions was being withdrawn because ANDAs were never submitted and PREA requires that all applications submitted on or after April 1, 1999, for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration contain an assessment of the safety and effectiveness of the drug for the claimed indications in relevant pediatric subpopulations unless the requirement is waived or deferred. Thus, these suitability petitions no longer satisfied the conditions for approval. The notice became effective on March 26, 2007.

In response to the notice, Roxane sent FDA a letter dated March 1, 2007, regarding the withdrawal of approval of its suitability petition for lorazepam oral solution, 1 mg/10 mL (Docket No. FDA–1994–P–0017). Roxane stated that it submitted ANDA 74–648 for lorazepam oral solution, 1 mg/10 mL, on the basis of the approval of its suitability petition for lorazepam oral solution, 1 mg/10 mL (Docket No. FDA–1994–P–0017). Roxane also stated that during the review of the ANDA, they were asked to change the name of the product to lorazepam oral solution, 0.5 mg/5 mL, and the ANDA was approved on March 18, 1997. FDA has reviewed its records and determined that ANDA 74–648 was submitted under suitability petition no. 94P–0199/CP1 before April 1, 1999; therefore, approval of this suitability petition should not have been withdrawn. This document corrects the error and retroactively reinstates approval of the suitability petition for lorazepam oral solution, 1 mg/10 mL (Docket No. FDA–1994–P–0017).

In addition, FDA has determined that the notice contained incorrect petition numbers for two of the suitability petitions. This document corrects those errors.

In FR Doc. E7–3043, appearing on page 8184 in the **Federal Register** of Friday, February 23, 2007, the following corrections are made:

1. On page 8185, in the table, in the first column, for Petition No., ''85P–0095/CP1'' is corrected to read ''83N–0095/CP1''.

2. On page 8187, in the table, in the first column, for Petition No., ''92P–0332/CP1'' is corrected to read ''92P–0232/CP1''.

3. On page 8187, in the table, in the first column, for Petition No., ''94P–0199/CP1'' is deleted.

Dated: September 29, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–23721 Filed 10–6–08; 8:45 am]

BILLING CODE 4160–01–S

[1] This citizen petition was originally assigned docket number 94P-0199. The number was changed to FDA–1994–P–0017 as a result of FDA's transition to its new docketing system (*http://www.Regulations.gov*) in January 2008.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service Background Investigations of Individuals in Positions Involving Regular Contact With or Control Over Indian Children, OPM-306

Correction

In notice document E8–22359 beginning on page 55122 in the issue ofWednesday, September 24, 2008, make the following corrections:

1. On page 55122, in the third column, in the second full paragraph, in the 12th line ''IRS'' should read ''IHS''.

2. On page 55123, in the first column, in the third full paragraph, seven lines from the bottom ''IRS'' should read ''IHS''.

[FR Doc. Z8–22359 Filed 10–6–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 23, 2008, 8 a.m. to October 24, 2008, 5 p.m., Holiday Inn Express Hotel and Suites, San Francisco Fisherman's Wharf, 550 North Point Street, San Francisco, CA, 91433 which was published in the **Federal Register** on September 19, 2008, 73 FR 54408–54411.

The meeting will be held October 22, 2008, 6 p.m. to October 23, 2008, 8 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23594 Filed 10–6–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552bcX4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Imaging Pain.
Date: October 22, 2008.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; EPIC Member Conflict Panel.
Date: October 23, 2008.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Scott Osborne, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csi.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts in Psychopathology, Stress and Regulation.
Date: October 28–29, 2008.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Cheri Wiggs, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; F05 Fellowships.
Date: November 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.
Contact Person: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.
Date: November 6–7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2400 M Street, NW., Washington, DC 20037.
Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Rehabilitation Sciences.
Date: November 6–7, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Mayflower Park Hotel, 405 Olive Way Seattle, WA 98101.
Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cognition, Language, and Perception Fellowship Study Section.
Date: November 7, 2008.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301 594–3163, *champoum@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Discovery and Development of Therapeutics, Study Section.
Date: November 10, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Shiv A. Prasad, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics of Filamentous Fungi.
Date: November 12–13, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael K. Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435–1147, *mschmidt@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Diversity Program.
Date: November 12, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Risk, Dementia, and Aging.
Date: November 12, 2008.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biophysical and Physiological Neuroscience.
Date: November 12–13, 2008.
Time: 6 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel and Suites, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Michael A. Lang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk Prevention and Health Behavior Fellowships.
Date: November 13, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.
Contact Person: Karen Lechter, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Diversity Fellowships in Neuroscience.

Date: November 13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cathy J. Wedeen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–435–1191, *wedeenc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Behavioral Neuroscience (FO2A).

Date: November 13–14, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Lombardy Hotel, 2019 I Street, NW., Washington, DC 20006.

Contact Person: Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435–0634, *hampsona@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Predoctoral Fellowship to Promote Diversity in Health Related Research (DCPS).

Date: November 14, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS International Training and Research Program.

Date: November 14, 2008.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health of the Population SBIR–2.

Date: November 14, 2008.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Aging and Mortality Across Species.

Date: November 14, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ayres Hotel Manhattan Beach, 14400 Hindry Avenue, Hawthorne, CA 90250.

Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 07–143, Pathways Linking Environment, Behaviors and HIV/AIDS.

Date: November 14, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sandra L. Melnick Seitz, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnicks@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; International Clinical, Operations and Health Services, Research Training Awards for AIDS and TB.

Date: November 14, 2008.

Time: 3 p.m. to 6 p.m..

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23597 Filed 10–6–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Submission for Review: US–CERT Incident Reporting

AGENCY: National Protection and Programs Directorate, National Cyber Security Division, DHS.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on new information collection request 1670–NEW, US–CERT Incident Reporting. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), DHS is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 11, 2008 at 73 FR 33101 allowing for a 60-day public comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 6, 2008. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for National Protection and Programs Directorate, DHS or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for National Protection and Programs Directorate, DHS or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, National Cyber Security Division.

Title: US–CERT Incident Reporting.

OMB Number: 1670–NEW.

Frequency: Once.

Affected Public: Federal, State, Local, Tribal, Private Sector.

Number of Respondents: 6000 per year.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 2000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Description: The Federal Information Security Management Act of 2002 requires all federal agencies to report security incidents to a federal incident response center, designated as the United States Computer Emergency Readiness Team (US–CERT). US–CERT has created a web-based Incident Reporting Form for all federal agencies, organizations, private and commercial companies, and individuals to submit incidents to US–CERT's security operations center. In July of 2006, OMB issued Memo M06–19 revising reporting procedures to require all federal agencies to report all incidents involving personally identifiable information (PII) to US–CERT within one hour of discovering the incident.

Dated: August 14, 2008.

Matt Coose,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E8–23747 Filed 10–6–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0117]

Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee Management; Notice of Closed Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee will meet October 20–22, 2008, at the Booz Allen Hamilton office in Norfolk, VA. The meeting will be closed to the public beginning October 20, 2008 at 12 p.m.

DATES: The Homeland Security Science and Technology Advisory Committee will meet October 20, 2008, from 12 p.m. to 5:45 p.m., October 21, 2008, from 9 a.m. to 4:30 p.m. and on October 22, 2008, from 9 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the office of Booz Allen Hamilton, Twin Oak II, 5800 Lake Wright Drive, Suite 400, Norfolk, VA 23502. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by Friday, October 15, 2008. Send written material to Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528. Comments must be identified by DHS–2008–0117 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: HSSTAC@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–254–6173.
- *Mail:* Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Homeland Security Science and Technology Advisory Committee, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528, 202–254–5739.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

The committee will meet for the purpose of organizational and preliminary technical discussions on the next cycle of HSSTAC studies including classified topics.

Basis for Closure: In accordance with Section 10(d) of the Federal Advisory Committee Act, it has been determined that the Science and Technology Advisory Committee meeting concerns sensitive Homeland Security information and classified matters within the meaning of 5 U.S.C. 552b(c)(1) and (c)(9)(B) which, if prematurely disclosed, would significantly jeopardize national security and frustrate implementation of proposed agency actions.

Dated: September 30, 2008.

Jay M. Cohen,

Under Secretary for Science and Technology.

[FR Doc. E8–23789 Filed 10–6–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0105]

Privacy Act of 1974; United States Coast Guard Auxiliary Database System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of records notices, the Department of Homeland Security is giving notice that it proposes to update and reissue the following legacy record system DOT/CG 501 Auxiliary Management Information System, April 11, 2000, as a Department of Homeland Security system of records notice titled United States Coast Guard Auxiliary Database. The Auxiliary Database is the United States Coast Guard's information system that tracks and reports contact, activity, performance, and achievement information about the members of its volunteer workforce element, the United States Coast Guard Auxiliary. Categories of individuals and categories of records

have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect the United States Coast Guard's Auxiliary Database record system. This new system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before November 6, 2008. This new system will be effective November 6, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0105 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: David Roberts (202–475–3521), Privacy Officer, United States Coast Guard. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/United States Coast Guard (USCG) have relied on previous Privacy Act systems of records notices for the collection maintenance of records that concern the USCG Auxiliary Database (AUXDATA) system of records.

As part of its efforts to streamline and consolidate its record systems, DHS is updating and reissuing a DHS/USCG system of records under the Privacy Act (5 U.S.C. 552a) that deals with USCG Auxiliary program management. The collection and maintenance of this information will assist DHS/USCG in meeting its obligation to administer the USCG Auxiliary program.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of records notices, DHS/USCG is giving notice that it proposes to update and reissue the following legacy record system DOT/CG 501 Auxiliary Management Information System (AUXMIS) (65 FR 19475 April 11, 2000) as a DHS/USCG system of records notice titled, Auxiliary Database (AUXDATA). The AUXDATA system is the USCG's information system that tracks and reports contact, activity, performance, and achievement information about the members of its volunteer workforce element, the USCG Auxiliary. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect DHS/USCG's AUXDATA record system. This new system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the AUXDATA System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

System of Records
DHS/USCG–024

SYSTEM NAME:

United States Coast Guard Auxiliary Database.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the USCG Headquarters in Washington, DC, the USCG Operations Systems Center in Martinsburg, WV, and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include all current and former USCG Auxiliarists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Personal information (name, employee identification number, address, birth date, phone number);
- Auxiliary qualifications information (formal designations in program disciplines that result from successful completion of training regimens, for example: Class instructor, vessel examiner, boat coxswain, and certifications and licenses);
- Auxiliary activities information (patrols conducted, classes taught); and
- Information on facilities (boats, radio stations or aircraft-owned by Auxiliarists as well as facility identification numbers (e.g. boat license number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; 14 U.S.C. 632, 830, 831; COMDTINST M16790.1 (series).

PURPOSE(S):

This system is the primary management tool for the USCG Auxiliary program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney

Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on tape at the USCG Operations Center in Martinsburg, WV.

RETRIEVABILITY:

Information is retrieved by individual's name and employee identification number (EMPLID).

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Retention and disposal are performed in accordance with USCG standard retention policies and back-up schedules established at the USCG Operations Systems Center in Martinsburg, WV. Back-ups are performed on tape, and tapes are overwritten for reusability purposes. Incremental back-ups are run six days each week and are kept for a minimum of two weeks. Full back-ups are run once each week and are kept for a minimum for four weeks. Quarterly full back-ups are run and kept for one year. Yearly full back-ups, run in January, are kept indefinitely.

SYSTEM MANAGER AND ADDRESS:

United States Coast Guard, Office of Command, Control, Communications, Computers, and Sensors Capabilities (CG–761), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001. United States Coast Guard, Office of Auxiliary and Boating Safety (CG–542), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to United States Coast Guard, Office of Command, Control, Communications, Computers, and Sensors Capabilities (CG–761), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001. United States Coast Guard, Office of Auxiliary and Boating Safety (CG–542), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

When seeking records about yourself from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

All records pertaining to Auxiliary members are derived from forms filled out by the individuals on a voluntary basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 30, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23749 Filed 10–6–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of removal of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it will remove five system of records notices from its inventory of record systems because the United States Coast Guard no longer requires the systems. The five obsolete systems are: DOT/CG 503 Motorboat Registration, April 11, 2000, DOT/CG 509 Non-Judicial Punishment Record, April 11, 2000, DOT/CG 526 Adjudication and Settlement of Claims System, April 11, 2000, DOT/CG 633 Coast Guard Civilian Personnel Security Program, April 11, 2000, and DOT/CG 676 Official Coast Guard Reserve Service Record, April 11, 2000.

DATES: *Effective Date:* November 6, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile 1–866–466–5370.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is removing five United States Coast Guard (USCG) system of records notice from its inventory of record systems.

DHS inherited these record systems upon its creation in January of 2003. Upon review of its inventory of systems of records, DHS has determined it no longer needs or uses these system of records and is retiring the following: DOT/CG 503 Motorboat Registration (65 FR 19475 April 11, 2000), DOT/CG 509 Non-Judicial Punishment Record (65 FR 19475 April 11, 2000), DOT/CG 526 Adjudication and Settlement of Claims System (65 FR 19475 April 11, 2000), DOT/CG 633 Coast Guard Civilian Personnel Security Program (65 FR 19475 April 11, 2000), and DOT/CG 676 Official Coast Guard Reserve Service Record (65 FR 19475 April 11, 2000).

DOT/CG 503 Motorboat Registration was originally established to manage the USCG boating safety program.

DOT/CG 509 Non-Judicial Punishment Record was originally established to administer military justice.

DOT/CG 526 Adjudication and Settlement of Claims System was originally established to determine the entitlement of claimants who submit claims to the USCG.

DOT/CG 633 Coast Guard Civilian Personnel Security Program was originally established to determine eligibility for access to classified information under Executive Order 11652.

DOT/CG 676 Official Coast Guard Reserve Service Record was originally established to ensure fulfillment of normal administrative personnel procedures, including examining and screening for completeness and accuracy of records correspondence.

Eliminating these systems of records notices will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 30, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23751 Filed 10–6–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5252–N–01]

Reconsideration of Waivers Granted to and Alternative Requirements for the State of Alabama's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of reconsidered waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes the statutorily required reconsideration of additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Alabama on June 14, 2006, for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Katrina in 2005. HUD previously published an allocation and application notice on February 13, 2006, applicable to this grant and four others under the same appropriation and extended that notice on August 8, 2008. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Alabama also notes statutory provisions affecting program design and implementation. The original notice has been reconsidered and the waivers are being retained.

DATES: *Effective Date:* October 14, 2008.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410–7000, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Fax inquiries may be sent to Ms. Kome at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes

in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (the 2006 Act) appropriated $11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Alabama received an allocation of $74,388,000 from this appropriation. The Act authorized the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including waivers concerning lead-based paint), upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The law further provided that the Secretary may waive the requirement that activities benefit persons of low and moderate income, except that at least 50 percent of the funds granted must benefit primarily persons of low and moderate income, unless the Secretary otherwise makes a finding of compelling need. The following waivers and alternative requirements are in response to written requests from the State of Alabama and are being retained after reconsideration.

The Secretary has found that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*; Title I of the Housing and Community Development Act of 1974, as amended, (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, of the Cranston-Gonzalez National Affordable Housing Act, as amended. Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery related statutory provisions. Compiling this information in a single notice creates a helpful resource for Alabama grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006) and retained in Notice 73 FR 46312, published August 8, 2008.

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each reconsidered waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. This Descriptions section also highlights some of the statutory items and alternative requirements described in the sections that follow.

Except as provided in the October 30, 2006, and August 8, 2008, notices, the waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Alabama. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility

Eligibility—housing related. The waivers that allowed new housing construction and payment of up to 100 percent of a housing downpayment have been necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disaster eligible under this notice.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include nonproject specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department noted that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, the Department removed the eligibility requirement that CDBG disaster recovery assisted planning-only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Anti-pirating. The limited waiver of the anti-pirating requirements allowed the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Program Income

A combination of CDBG provisions limited the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants was usually program income in accordance with the rules of the regular CDBG program of the applicable state and lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. The notice waived the existing statute and regulations to give the state, in all circumstances, the choice of whether or not a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan could retain this income and use it for additional disaster recovery activities. In addition, the notice allowed program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received

subsequently would become program income to the state's annual CDBG program. The alternative requirements provided all the necessary conforming changes to the program income regulations.

Relocation Requirements

HUD provided a limited waiver of the relocation requirements. HUD waived the one-for-one replacement of low- and moderate-income housing units demolished or converted using CDBG funds requirement for housing units damaged by one or more disasters. HUD waived this requirement because it did not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement did not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. Left unchanged, the requirement could have impeded disaster recovery and discouraged grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would have resulted from replacing all such units within the specified time frame.

HUD also waived the relocation benefits requirements contained in Section 104(d) of the 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.*). This change simplified implementation while preserving statutory protections for persons displaced by federal projects.

Timely Distribution of Funds

The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use its disaster recovery grant funds to carry out some or all activities directly, and because Congress expressly allowed this grant to be available until expended, HUD waived this requirement. However, HUD still expects the State of Alabama to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. Program income alternative requirement. 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead.

(a) Program income.

(1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, a tribe, or a subrecipient of a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe, or a unit of general local government with CDBG funds less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe, or the unit of general local government or a subrecipient of a state, tribe, or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe, or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe, or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the 1974 Act and carried out by an entity under the authority of section 105(a)(15) of the Act.

(3) The state may permit the unit of general local government or tribe that receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the United States Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or

tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the United States Treasury for revolving fund activities. Such program income is not required to be disbursed for nonrevolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the state.

(d) Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

2. Housing-related eligibility waivers. 42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100 percent of the downpayment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. Planning requirements. For CDBG disaster recovery assisted planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

4. Waiver and modification of the anti-pirating clause to permit assistance to help a business return. 42 U.S.C 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina and has since moved, in whole or in part, from the affected area to another state or to a labor market area within the same state to continue business.

5. Waiver of one-for-one replacement of units damaged by disaster. 42 U.S.C. 5301(d)(2) and (d)(3) are waived to remove the one-for-one replacement requirements for occupied and vacant, occupiable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained at 42 U.S.C. 5304(d) to the extent they differ from those of the Uniform Relocation Act. Also, 24 CFR 42.375 is waived to remove the requirements implementing the above-mentioned statutory requirements regarding replacement of housing and 24 CFR 42.350, to the extent that these regulations differ from the regulations contained in 49 CFR part 24. These requirements are waived provided the grantee assures HUD it will use all resources at its disposal to ensure no displaced homeowner will be denied access to decent, safe, and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

6. Waiver of requirement for timely distribution of funds. 24 CFR 570.494 regarding timely distribution of funds is waived.

Notes on Applicable Statutory Requirements

7. Notes on flood buyouts:

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match Federal Emergency Management Agency (FEMA) Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses, in perpetuity.

c. Future federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) prohibits flood disaster assistance in certain circumstances. In general, it provides that no federal disaster relief assistance made available in a flood disaster area may be used to make payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph (4)(iv) below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(i) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(ii) Maintain flood insurance in accordance with applicable federal law with respect to such property.

(iii) Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(i) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(ii) The property is damaged by a flood disaster; and

(iii) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the federal government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

(iv) The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

(v) The term ''Federal disaster relief assistance'' applies to HUD or other federal assistance for disaster relief in ''flood disaster areas.'' The term ''flood disaster area'' is defined in section 582(d)(2) to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

8. Non-Federal Cost Sharing of Army Corps of Engineers Projects. Public Law 105–276, Title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Dated: September 26, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–23664 Filed 10–6–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection: Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB a new information collection request (ICR) for approval of the paperwork requirements for the National Institutes for Water Resources (NIWR)–USGS competitive grant program conducted in conjunction with the State Water Resources Research Institutes. The NIWR cooperates with the USGS in establishing total programmatic direction, reporting on the activities of the Institutes, coordinating and facilitating regional research and information and technology transfer, and in operating the NIWR–USGS Student Internship Program. Furthermore, an annual progress and final technical report for all projects is required at the end of the project period.

This notice provides the public an opportunity to comment on the paperwork burden of this collection.

DATES: You must submit comment on or before December 8, 2008.

ADDRESSES: Send your comments to the IC to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, USGS–WRRI.

FOR FURTHER INFORMATION CONTACT: John E. Schefter, Chief, Office of External Research, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 424, Reston, Virginia 20192 (mail) at (703) 648–6800 (Phone); or *schefter@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Title: NIWR–USGS National Competitive Grant Program.

OMB Control Number: 1028-new.

Abstract: The NIWR–USGS National Competitive Grant Program issues an annual call for proposals to support research on water problems and issues of a regional or interstate nature beyond those of concern only to a single state and which relate to specific program priorities identified jointly by the USGS and the state water resources research institutes authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 *et seq.*). Any investigator at an accredited institution of higher learning in the United States is eligible to apply for a grant through a water research institute or center established under the provisions of the Act. Proposals involving substantial collaboration between the USGS and university scientists are encouraged. Proposals may be for projects of 1 to 3 years in duration and may request up to $250,000 in federal funds. Successful applicants must match each dollar of the federal grant with one dollar from nonfederal sources. This program is authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10303(g)).

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency of Collection: Annually.

Affected Public: Research investigators at accredited institutions of higher education.

Respondent's Obligation: Voluntary (necessary to receive benefits).

Estimated Number and Description of Respondents: We expect to receive approximately 65 applications and award 7 grants per year.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden to be 36 hours per response. This includes 24 hours per applicant to prepare and submit the application; and 12 hours (total) per grantee to complete the interim and final technical reports.

Annual Burden Hours: 1656.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, *et seq.*) requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments. We invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60 day public comment period.

USGS Information Collection Clearance Officer: Phadrea D. Ponds 970–226–9445.

Dated: October 1, 2008.

John E. Schefter,

Water Resources Research Act Program Coordinator.

[FR Doc. E8–23646 Filed 10–6–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal—State Class III Gaming Compact taking effect.

SUMMARY: This publishes notice of the 2008 Class III Gaming Compact between the Nez Perce Tribe and the State of Idaho taking effect.

DATES: *Effective Date:* October 7, 2008

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary for Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Compact is entered into in connection with the state lottery litigation between the parties and thus presents unique circumstances resulting in our decision to neither approve nor disapprove the Compact within the 45-day statutory time frame.

Dated: September 26, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E8–23710 Filed 10–6–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Habematolel Pomo of Upper Lake, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR part 151.

SUMMARY: The Acting Deputy Assistant Secretary for Policy and Economic Development made a final agency determination to acquire approximately 11.24 acres of land into trust for the Habematolel Pomo of Upper Lake of California on September 8, 2008. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1. The duties of the Assistant Secretary—Indian Affairs were delegated to the Acting Deputy Assistant Secretary for Policy and Economic Development on May 23, 2008.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Office of Indian Gaming, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR part 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On September 8, 2008, the Acting Deputy Assistant Secretary for Policy and Economic Development decided to accept approximately 11.24 acres of land into trust for the Habematolel Pomo of Upper Lake of California under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 11.24 acres are located in Upper Lake, Lake County, California. The parcel will be used for the development and operation of a class II and class III gaming facility.

The land proposed for acquisition is referred to herein below and is situated the unincorporated area, County of Lake, State of California, and is described as follows:

All that property within a portion of Section 7, Township 15 North, Range 9 West, M.D.B. & M., in the County of Lake, State of California, and being a portion of those lands described by those Grant Deeds to Luna Gaming-Upper Lake LLC, one filed February 15, 2006 as Document Number 2006003927, and one filed February 17, 2006 as Document Number 2006004152, Lake County Records, described as the following three parcels:

Parcel One

Beginning at a point on the southerly line of Ukiah Tahoe State Highway No. 20 that is South 83°56′ East, measured along the southerly line of said State Highway 237.7 feet from the Northwest corner of Tract Two, as said Tract Two is described in that certain deed from Ruth C. Polk, a widow, and Elysse P. Twedt, her daughter, to Robert C. Polk, et ux, as joint tenants, dated August 6, 1959, and of record in Book 316 of Official Records of Lake County at Page 208, and running thence from said point of beginning South 12°57′ West to a point that is due East of a point that is North 0°09′ West 3009.76 feet from 1¼-inch iron pipe that is West 653.07 feet from the center of Section 18, Township 15 North, Range 9 West, M.D.M.; thence East to the Southerly terminal end of that certain course given as North 12°50′30″ East 1381.46 feet on said Polk deed; thence along the Easterly line of said Polk tract North 12°50′30″ West 1381.46 feet to an iron pipe on the Southerly line of said Highway; and thence along the Southerly line of said Highway North 83°56′ West 237.7 feet to the point of beginning.

Parcel Two

Beginning at a 1¼-inch iron pipe that is West 653.07 feet from the center of Section 18, Township 15 North, Range 9 West, M.D.M., and running thence from said point of beginning North 0°09′ West 1504.88 feet; thence West to the Westerly line of that certain tract described as Tract Two in a deed from Ruth H. Polk and Elysse P. Twedt, her daughter, to Robert C. Polk, et ux, dated August 6, 1959, and of record in Book 316 of Official Records of Lake County at Page 208; thence along the Westerly line of said tract so conveyed to Robert C. Polk, et ux, South to the Southwest corner thereof; and thence along the South line of said tract so conveyed to Robert C. Polk, et ux, East 677.07 feet to the point of beginning.

Parcel Three

Beginning at a point on the Southerly line of the Ukiah-Tahoe State Highway No. 20 that is South 12°57′ West, from a point on the centerline of Section 7, Township 15 North, Range 9 West, M.D.M., that is West 317.2 feet from the center of said Section, and running thence from said point of beginning, South 12°57′ West to a point that is South 12°57′ West 2311.5 feet from a point on the centerline of said Section that is West 317.2 feet from the center of said Section; thence West 219 feet to the East line of the lands formerly owned of record by Charles W. Sailor; thence along the East line of said former Sailor lands South 00°30′ West 241.2 feet; thence along the Southerly line of said former Sailors lands North 82½° West 265.4 feet to the East line of Lot 4 of said Section 7, said last mentioned point being on the East line of said former Sailor lands; thence South, along the East line of said Lot 4 2.50 chains, more or less, to the Northwest corner of the East half of the Northwest quarter of Section 18, Township 15 North, Range 9 West, M.D.M.; thence South to a point that is due West of a point that is North 0°09′ West 1504.88 feet from a 1¼-inch pipe that is West 653.07 feet from the center of said Section 18; thence East to said point that is North 0°09′ West 1504.88 feet from a 1¼-inch iron pipe that is West 653.07 feet from the center of said Section 18; thence North 0°09′ West 1504.88 feet; thence East to a point that is South 12°57' West from a point on the Southerly line of said State Highway that is South 83°56′ East 237.7 feet from the point of beginning; thence North 12°57′ East to said point on the Southerly line of said State Highway that is South 83°56′ East, measured along the Southerly line of said State Highway, 237.7 feet from the point of beginning; thence along the Southerly line of said State Highway North 83°56′ West 237.7 feet to the point of beginning.

Excepting Therefrom all that portion lying Southerly of a line beginning at a point on the Easterly boundary line of those lands described as Parcel One of said Document Number 2006003927, said point bears North 15°23′31″ East (North 12°50′30″ East per said Document) as shown on that map filed September 18, 2006, in Book 80 of Record of Surveys, Pages 23, 24 and 25, 302.47 feet from the Southeast corner of said Parcel One, said corner being a ½″ Rebar capped LS 7588 per said Record Survey Map; thence leaving said Easterly boundary line North 78°36′11″ West 216.24 feet; thence South 72°22′05″ West 260.75 feet to a point on the Westerly boundary line of those lands described by said Document Number 2006004152, having a bearing of South 13°39′30″ West as shown on said Record of Survey Map (South 12°57′ West per said Document), said point bears North 13°39′30″ East 227.39 feet from the Southerly terminus of said boundary line, said terminus being a ½″ rebar capped LS 7588 per said Record of Survey map, pursuant to that certain Lot Line Adjustment filed July 14, 2008, Instrument No. 2008012533, Official Records Lake County.

Also Excepting Therefrom all that portion of the above-described real property lying Northerly of a line running parallel with and 20.00 feet Southerly, measured at right angles, from the Southerly right-of-way line of State Highway 20, as said highway is depicted on that certain Record of Survey filed September 18, 2006, in Book 80 of Records of Surveys at pages 23–25.

Dated: September 17, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary—Policy and Economic Development.

[FR Doc. E8–23706 Filed 10–6–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Logan Museum of Anthropology, Beloit College, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Logan Museum of Anthropology, Beloit College, Beloit, WI, that meet the definitions of ''sacred objects'' and ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The cultural objects are one drum, four drum legs, and four drum sticks. All are catalogued within the Logan Museum's catalogue number 30058.

The drum measures 35 cm high by 62 cm in diameter. It is made of a wooden washtub covered on the top and bottom with painted hide drumheads. The top drumhead exhibits a red line and yellow stripe across the center, and half the drumhead is painted green. The paint on the top drumhead is heavily faded. The bottom drumhead is mostly unpainted on the exterior, but the interior is painted green with a red line across the center. The interior paint and a series of perforations along the side of the bottom drumhead indicate it once served as a top drumhead. A cloth strip with glass-beaded floral designs and four glass-beaded tabs with floral

designs and brass tinklers are attached to the outside of the drum, near the top. Four leather straps are attached to the outside of the drum, one for each of the four drum legs. Each leg is made of wood wrapped in black cotton and blue cloth. Three of the drum sticks are long and slender with narrow heads of blue denim wrapped in cotton thread. The fourth stick is shorter, and has a round stuffed buckskin head.

In 1955, the Logan Museum acquired the drum, legs, and sticks when it purchased the collection of Albert Green Heath. Associated collection records contain Heath's following statement on the cultural items: ''Large Pow wow (tribal drum) complete with 4 Drum sticks & 4 stakes. White Earth Band of Chippewas. Minn., Extremely Rare.'' Collection records contain no additional information about the objects. Based on general information about his collecting history, Heath most likely acquired the drum, legs, and sticks at the White Earth Reservation in Minnesota in the early 20th century.

On the basis of Heath's attribution of the objects to the White Earth Band of Chippewas, officials of the Logan Museum of Anthropology consulted with representatives of the White Earth Band of the Minnesota Chippewa Tribe, Minnesota. During consultation, tribal representatives indicated that the drum and its associated legs and sticks are central to the Big Drum Society Ceremony, and are considered sacred objects that are needed by the Ceremony's practitioners. The drums are not owned by individuals but by Drum Societies, which are responsible for caring for the objects used in the Ceremony and thus, individuals do not have the right to alienate a Big Drum. The White Earth Band was one of the earliest of the Ojibwe (Chippewa) groups to adopt the Big Drum Society Ceremony in the 19th century, and the Ceremony has ongoing historical, traditional, and cultural importance to the tribe.

Officials of the Logan Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the nine cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Logan Museum of Anthropology have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the nine cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Logan Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects/objects of cultural patrimony and the White Earth Band of the Minnesota Chippewa Tribe, Minnesota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact William Green, Director, Logan Museum of Anthropology, Beloit College, 700 College St., Beloit, WI 53511, telephone (608) 363–2119, before November 6, 2008. Repatriation of the sacred objects/objects of cultural patrimony to the White Earth Band of the Minnesota Chippewa Tribe, Minnesota may proceed after that date if no additional claimants come forward.

The Logan Museum of Anthropology is responsible for notifying the White Earth Band of the Minnesota Chippewa Tribe, Minnesota that this notice has been published.

Dated: September 10,2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23698 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the culturally affiliated groups listed in a Notice of Intent to Repatriate Cultural Items published in the **Federal Register** of July 30, 2007 (FR Doc. E7–14578, pages 41522–41524), by the addition of the Stockbridge Munsee Community, Wisconsin. After publication of the notice, additional evidence derived from historical information and further consultations with the Stockbridge Munsee Community, led to this revised finding of cultural affiliation. Based on the additional evidence, officials of the Peabody Museum of Archaeology and Ethnology have found that there is a relationship of shared group identity between the Delaware people (from Middle Woodland through Historic period) and the Munsee Delaware people who are represented by the Stockbridge Munsee Community, Wisconsin. Descendants of the Delaware people are represented by the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin.

In the **Federal Register** of July 30, 2007 (FR Doc. E7–14578, pages 41522–41524), paragraph numbers 21and 22 are corrected by substituting the following paragraph:

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 39 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before November 6, 2008. Repatriation of the unassociated funerary objects to the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee

Community, Wisconsin may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; Stockbridge Munsee Community, Wisconsin; and Delaware Tribe of Indians, a non-federally recognized Indian group, that this notice has been published.

Dated: September 10, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23696 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: San Diego Archaeological Center, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the San Diego Archaeological Center, San Diego, CA, that meet the definition of ''sacred objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1978, a steatite sucking tube was removed from archeological site W–569 in San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). This site is located in the west part of San Diego County in the City of Oceanside, which is adjacent to Rancho Guajome. On June 29, 2007, the collection was accessioned by the San Diego Archaeological Center, and assessed for objects eligible for repatriation in accordance with NAGPRA.

The archeological site W–569 falls within traditional Luiseno territory, and the reporting archeologists determined it to be of the Late Holocene, Late Milling Period, which has been associated with the cultural antecedents of the Luiseno Nation in the region. Steatite sucking tubes are known to be used by the Luiseno in sacred rites.

In 1989, cultural items were removed from archeological site CA-SDI–11,068A in San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). This site is located in the northern part of San Diego County in the City of San Marcos, adjacent to Twin Oaks Valley. On May 10, 2006, the collection was accessioned by the San Diego Archaeological Center, and assessed for objects eligible for repatriation in accordance with NAGPRA. The cultural items are known to be used by the Luiseno in sacred rites and were removed from Luiseno traditional territory. The 66 sacred objects are 45 pieces of ochre, 1 piece of hematite, 2 quartz crystals, 3 tourmaline crystals, 10 effigy fragments, 4 ceramic pipe fragments, and 1 raptor talon.

The Luiseno Nation is represented by the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; Twenty-Nine Palms Band of Luiseno Mission Indians of California; and San Luis Rey Band of Mission Indians, a non-federally recognized Indian group.

Officials of the San Diego Archaeological Center have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 67 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the San Diego Archaeological Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Luiseno Nation, which is represented by the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; Twenty-Nine Palms Band of Luiseno Mission Indians of California; and San Luis Rey Band of Mission Indians, a non-federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Cindy Stankowski, San Diego Archaeological Center, 16666 San Pasqual Valley Road, Escondido, CA 92027–7001, telephone (760) 291–0370, before November 6, 2008. Repatriation of the sacred objects to the Luiseno Nation, which is represented by the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; Twenty-Nine Palms Band of Luiseno Mission Indians of California; and San Luis Rey Band of Mission Indians, a non-federally recognized Indian group, may proceed after that date if no additional claimants come forward.

The San Diego Archaeological Center is responsible for notifying the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Luiseno Mission Indians of California; and San Luis Rey Band of Mission Indians, a non-federally recognized Indian group, that this notice has been published.

Dated: September 12, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23690 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: San Diego Archaeological Center, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the San Diego Archaeological Center, San Diego, CA, that meet the definition of ''sacred objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1995, three cultural items were removed from archeological site CA-SDI–8797, Carlsbad, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). In 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The three cultural items are three pieces of ochre.

Site CA-SDI–8797 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites.

In 1996, seven cultural items were removed from archeological site CA-SDI–12,814, Carlsbad, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On November 6, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The seven cultural items are one quartz crystal, one pipe fragment, and five crescentics.

Site CA-SDI–12,814 falls within traditional Kumeyaay territory. Quartz Crystals, stone pipes and crescentics are known to be used by the Kumeyaay Nation in sacred rites.

In 1995, three cultural items were removed from archeological site CA-SDI–8303, Carlsbad, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On January 19, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The three cultural items are three shell beads.

Site CA-SDI–8303 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Shell beads are known to be used by the Kumeyaay Nation in sacred rites.

In 1991, one cultural item was removed from archeological site CA-SDI–691, Carlsbad, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On February 13 and 16, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The one cultural item is a ''charm stone.''

Site CA-SDI–691 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' ''Charm stones,'' such as this one, are known to be used by the Kumeyaay Nation in sacred rites.

In 1988, one cultural item was removed from archeological site CA-SDI–691, Carlsbad, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On February 13 and 16, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The one cultural item is a piece of ochre.

Site CA-SDI–691 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites.

In 1990, cultural items were removed from archeological sites CA-SDI–7287; 7290 and 7293, adjacent to the San Dieguito River, Del Mar, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On March 16, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The 19 cultural items are pieces of ochre.

Sites CA-SDI–7287; 7290 and 7293 fall within traditional Kumeyaay territory. Ochre is known to be used by the Kumeyaay Nation in sacred rites.

In 1991, one cultural item was removed from archeological site CA-SDI–11,767, along the San Diego River Valley on a low terrace in the northeastern portion of the Stardust (now Riverwalk) Golf Course, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On June 29, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The one cultural item is a tourmaline crystal.

Site CA-SDI–11,767 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Crystals are known to be used by the Kumeyaay Nation in sacred rites.

In 1987 and 1988, 43 cultural items were removed from archeological site CA-SDI–4609, Sorrento Valley, San Diego, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). In June 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The 43 cultural items are 2 pipe fragments, 1 quartz crystal, and 40 ochre fragments.

Site CA-SDI–4609 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ceramic pipes, quartz crystals, and ochre are known to be used by the Kumeyaay Nation in sacred rites.

In 1974, two cultural items were removed from archeological site CA-SDI–4513, Sorrento Valley, San Diego, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). In June 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The two cultural items are a piece of ochre and a steatite pipe fragment.

Site CA-SDI–4513 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre and steatite pipes are known to be used by the Kumeyaay Nation in sacred rites.

In 1980, 49 cultural items were removed from archeological site CA-SDI–4609, Sorrento Valley, San Diego, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). In June 2007, the collection was

accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The 49 cultural items are 1 ochre fragment and 48 shell disc beads.

Site CA-SDI–4609 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites. Shell disc beads are associated with funerary practices; however, it is not know if a burial was encountered at the time of excavation.

In 1978, seven cultural items were removed from archeological sites CA-SDI–5396 and CA-SDI–5399, Jamul, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On June 29, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The seven cultural items are quartz crystals.

Sites CA-SDI–5396 and CA-SDI–5399 fall within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Quartz crystals are known to be used by the Kumeyaay Nation in sacred rites.

In 1986, 11 cultural items were removed from archeological site CA-SDI–4845 on private property adjacent to Encinitas Creek near Encinitas, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On June 23, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The 11 cultural items are 4 quartz crystals and 7 pieces of ochre.

Site CA-SDI–4845 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Quartz crystals and ochre are known to be used by the Kumeyaay Nation in sacred rites.

In 1990, one cultural item was removed from archeological site CA-SDI–10,148, near the San Diego River, Santee, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). In June 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The one cultural item is a piece of ochre.

Site CA-SDI–10,148 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites.

In 1985 and 1986, 14 cultural items were removed from archeological sites CA-SDI–5935; 5938; and 10,302, in the northwest portion of the community of Rancho Bernardo, San Diego, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). In June 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The 14 cultural items are pieces of ochre.

Sites CA-SDI–5935; 5938; and 10,302 fall within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites.

In 1983, 49 cultural items were removed from archeological site CA-SDI–4358 (W–108/954), north of Batiquitos Lagoon, Carlsbad (Encinitas Quadrangle), San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). In June 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The 49 cultural items are pieces of ochre.

Site CA-SDI–4358 (W–108/954) falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites.

In 1979, three cultural items were removed from archeological site W–1320, Encinitas, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On June 30, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The three cultural items are pieces of ochre.

Site W–1320 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites.

In 1979, 29 cultural items were removed from archeological site W–1949, Encinitas, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On June 30, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The 29 cultural items are pieces of ochre.

Site W–1949 falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Ochre is known to be used by the Kumeyaay Nation in sacred rites.

On an unknown date, one cultural item was removed from archeological site CA-SDI–777, near Pine Valley, San Diego County, CA. There is no documentation as to the circumstances of the excavation. On September 17, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The one cultural item is a ceramic pipe bowl fragment.

Site CA-SDI–777 falls within traditional Kumeyaay territory. Ceramic pipes are known to be used by the Kumeyaay Nation in sacred rites.

In 1992, one cultural item was removed from archeological site CA-SDI–11,569, Carlsbad, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On January 19, 2007, the collection was accessioned by the San Diego Archaeological Center for assessment of objects eligible for repatriation in accordance with NAGPRA. The one cultural item is a quartz crystal.

Site CA-SDI–11,569 is located within the direct impact area for the proposed realignment of Rancho Santa Fe Road, between Melrose Avenue on the north and La Costa Avenue on the south. The site falls within traditional Kumeyaay territory and the reporting archeologists determined it to be of the ''Late Prehistoric Period.'' Quartz crystals are known to be used by the Kumeyaay Nation in sacred rites.

The Kumeyaay Nation is represented by the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band

of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California); and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Officials of the San Diego Archaeological Center have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 245 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the San Diego Archaeological Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Kumeyaay Nation, represented by the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Cindy Stankowski, San Diego Archaeological Center, 16666 San Pasqual Valley Road, Escondido, CA 92027–7001, telephone 760–291–0370, before November 6, 2008. Repatriation of the sacred objects to the Kumeyaay Nation, on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California, may proceed after that date if no additional claimants come forward.

The San Diego Archaeological Center is responsible for notifying the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: July 22, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23701 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the New York State Museum, Albany, NY. The human remains were removed from Livingston, Monroe, and Ontario Counties, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by New York State Museum professional staff in consultation with representatives of the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

In 1911, human remains representing a minimum of 17 individuals were removed during excavations at the Tram Site (NYSM site No. 1037), Livonia Township, Livingston County, NY, by Everett R. Burmaster and Arthur C. Parker, New York State Museum staff. No known individuals were identified. The 38 associated funerary objects are 2 brass or copper bracelets, 15 plum pits, fragments of 2 ceramic vessels, 1 steatite sherd, 1 sample of hematite, 1 antler flaker, 1 chert end scraper, 1 chert core, 1 string of discoidal and tubular shell beads, 1 abrading stone, 3 bone awls, 3 antler pins, 5 unmodified shells, and 1 worked bone square.

Archeological and ethnohistoric evidence used to reconstruct a sequence of historic Seneca village movements identifies the Tram Site as an early historic Seneca site dating to circa A.D. 1580–1600. It is a large palisaded village

site with at least two associated cemeteries.

At an unknown time, but prior to 1916, human remains representing a minimum of one individual were removed from the Richmond Mills, also known as the Reed Fort site, in the Town of Richmond, Ontario County, NY, by George R. Mills. Mr. Mills sold the human remains to Ward's Natural Scientific Establishment, as part of a larger collection. In 1916, the New York State Museum purchased the human remains from Ward's Natural Scientific Establishment. No known individual was identified. No associated funerary objects are present.

At an unknown time, but prior to 1918, human remains representing a minimum of one individual were removed from the Richmond Mills site in the Town of Richmond, Ontario County, NY, by an unknown individual. In 1918, the New York State Museum purchased the human remains, as part of a larger collection, from Alvin H. Dewey. No known individual was identified. No associated funerary objects are present.

Archeological evidence, including pottery, removed during excavations at the Richmond Mills site, but not in the possession of the New York State Museum, indicates that the site was a habitation site and was occupied circa A.D. 1450–1550. Analysis of pottery styles indicates that the site was inhabited during a time when the Seneca and Cayuga cultural groups were developing distinct tribal identities while maintaining close social ties. The presence of Richmond Incised pottery is indicative of stylistic continuity with later Seneca sites as well as affinities with contemporary settlements in the Cayuga homeland.

At an unknown time, but prior to 1918, human remains representing a minimum of two individuals were removed from the Marsh site in the Town of East Bloomfield, Ontario County, NY, by Harrison C. Follett. In 1918, the New York State Museum purchased the human remains, as part of a larger collection, from Alvin H. Dewey. No known individuals were identified. No associated funerary objects are present.

The Marsh Site is the location of Gandagan, also known as Gandagaro, a large eastern Seneca village and cemetery, occupied circa A.D. 1655–1675. Gandagan was the site of St. Jacques, the third mission established by the Jesuits among the Seneca. The residents of this community, along with the mission, subsequently moved to Boughton Hill, where it was known by the same Seneca and mission names.

In 1919 and 1920, human remains representing a minimum of 23 individuals were removed from the Boughton Hill site (NYSM Site ι 1384) in Victor Township, Ontario County, NY, during excavations by Arthur C. Parker and Everett R. Burmaster, New York State Museum staff (Accession Nos. A1919.50 and 1920.50). Many of the burials had been previously disturbed, the field notes were brief, and the human remains and objects were poorly labeled. No known individuals were identified. The 94 associated funerary objects are 1 pottery effigy pipe; 7 pottery pipe stem fragments; 1 iron adze; 1 iron axe; 1 musket barrel with fragments of the ramrod and ramrod pipe; 2 smoothing stones; fragments of a wooden bowl; fragments of a bark bowl; fragments of a woven bark mat; 1 wooden spoon containing squash seeds; 3 brass kettles; 20 brass fragments; 2 iron knife blades; 9 botanical samples (e.g., seeds); 9 samples of hide, bark, and textile; 10 faunal remains; 3 bear canines; 1 bone comb; 1 bone bead; 15 glass, shell, and catlinite beads; 3 projectile points; and 1 sample of red ochre.

In approximately 1670, residents of the Marsh site relocated to the Boughton Hill site to establish the second and better known site of St. Jacques, the third Jesuit mission established among the Seneca, and the Seneca village of Gannagaro. The village also appears in two contemporary documents with a Seneca name meaning ''basswood place.'' The village was inhabited from circa A.D. 1655 until 1687, when it was destroyed during the French Campaign of Denonville. The Boughton Hill site is now Ganondagan State Historic Site.

At an unknown time, but prior to 1918, human remains representing a minimum of one individual were removed from the Dann site, also known as the Ball Farm, in Mendon Township, Monroe County, NY, by an unknown individual. In 1918, the New York State Museum purchased the human remains, as part of a larger collection, from Alvin H. Dewey. No known individual was identified. No associated funerary objects are present.

The Dann site was the location of Gandachioragon, a large western Seneca village and cemetery, inhabited circa A.D. 1655–1675. Jesuit missionaries established the first mission among the Seneca, La Conception, at Gandachioragon. Archeologically, the site is also known as Totiakton II. Residents of the community and the mission relocated to Shadekaronyes, the Rochester Junction Site, circa A.D. 1675. Looting of the cemetery began soon after Gandachioragon was abandoned.

At an unknown time, but prior to 1918, human remains representing a minimum of one individual were removed from the Rochester Junction Site, also known as the Sheldon Farm site, in Mendon Township, Monroe County, NY, by an unknown individual. In 1918, the New York State Museum purchased the human remains, as part of a larger collection, from Alvin H. Dewey. No known individual was identified. No associated funerary objects are present.

Rochester Junction was the location of a large western Seneca village and cemetery. In 1675, it was established by Jesuit missionaries and Seneca after the abandonment of Gandachioragon. The site was also known as Shadekaronyes, after the principal Seneca Snipe Clan chief who resided there. Archeologically, the site is also known as Totiakton I. The village was destroyed during the French Denonville Campaign of 1687. Looting of the cemetery commenced soon after the abandonment of the village.

At an unknown time, but prior to 1925, human remains representing a minimum of one individual were removed from an unknown location in the vicinity of Lima, Livingston County, NY. In 1925, the New York State Museum acquired the human remains. No known individual was identified. No associated funerary objects are present.

Copper staining on the mandible indicates that the human remains were originally buried with copper objects, suggesting a historic date for the interment. Five Seneca habitation sites and cemeteries have been identified in the vicinity of Lima, NY. Seneca sites in the vicinity of Lima include a historic period Seneca settlement in the village of Lima; a historic period Seneca cemetery one mile north of Lima; Fort Hill in the town of Lima (Archaeological History of New York, Parker, 1922); historic period Keinthe cemetery, in the town of Lima; and several small fishing camps. It is probable that the human remains were removed from one of the settlements and/or cemeteries.

In 1955, human remains representing a minimum of seven individuals were removed from the Kanadesaga Mound site, Geneva Township, Ontario, NY, during excavations by New York State Museum staff. No known individuals were identified. The 32 associated funerary objects are 3 coffin nails and over 10 fragments of coffin wood; 1 strap buckle; 1 iron hoe; 5 iron fittings (including 1 musket side plate, 1 iron handle, and 3 unidentified iron fragments); 3 crotal bells; 1 glass bead; 2 European clay pipe stem fragments; and 6 wampum beads.

Kanadesaga was the large eastern village of the Seneca dating to circa A.D. 1754–1779, and the home of the Seneca chief Sayenqueraghta, known also as ''Old King'' and ''Old Smoke.'' Contemporary accounts referred to Kanadesaga as the ''Seneca Castle,'' and the village's prominence on the political landscape was recognized by colonial leaders. The settlement was the site of a blockhouse built on Sir William Johnson's orders, which was the place of residence and workplace of several colonial blacksmiths to the Seneca, briefly the home of Reverend Samuel Kirkland, and a base for Butler's Rangers during the American Revolution. The settlement was destroyed by the American Sullivan-Clinton Campaign in 1779. In the mid–19th century, E.G. Squier and Lewis H. Morgan describe the site and associate the burial mound with the village's Seneca occupants. Morgan reported that Indians made annual visits to the burial mound.

Historical evidence and oral history indicates that the sites discussed above are located in a region that was occupied by the Seneca Indians from A.D. 1450–1779. Archeological evidence indicated that these sites were occupied during the time of Seneca occupation of the region. Based on historical evidence, oral history, and archeological evidence, the human remains and associated funerary objects are identified by officials of the New York State Museum as being Seneca. Descendants of the Seneca are represented by the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

Officials of the New York State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 54 individuals of Native American ancestry. Officials of the New York State Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 164 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the New York State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Lisa M. Anderson, NAGPRA Coordinator, New York State Museum, 3122 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, before November 6, 2008. Repatriation of the human remains and associated funerary objects to the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York may proceed after that date if no additional claimants come forward.

New York State Museum is responsible for notifying the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York that this notice has been published.

Dated: September 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23699 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary objects were removed from Burlington, Gloucester, and Mercer Counties, NJ, and Chester County, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the culturally affiliated groups listed in a Notice of Inventory Completion published in the **Federal Register** on July 30, 2007 (FR Do. E7–14625, pages 41524–41525), by the addition of the Stockbridge Munsee Community, Wisconsin. After publication of the notice, additional evidence derived from historical information and further consultations with the Stockbridge Munsee Community, led to this revised finding of cultural affiliation. Based on the additional evidence, officials of the Peabody Museum of Archaeology and Ethnology have found that there is a relationship of shared group identity between the Delaware people (from Middle Woodland through Historic period) and the Munsee Delaware people who are represented by the Stockbridge Munsee Community, Wisconsin. Descendants of the Delaware people are represented by the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin.

In the **Federal Register** of July 30, 2007, paragraph numbers 20 and 21 are corrected by substituting the following paragraphs:

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 19 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 16 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before November 6, 2008. Repatriation of the human remains and associated funerary objects to the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community,

Wisconsin may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; Stockbridge Munsee Community, Wisconsin; and Delaware Tribe of Indians, a non-federally recognized Indian group, that this notice has been published.

Dated: September 10, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23694 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: San Diego Archaeological Center, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the San Diego Archaeological Center, San Diego, CA. The human remains were removed from San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by San Diego Archaeological Center professional staff in consultation with representatives of the Kumeyaay Nation, on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California); and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

In 1983, human remains representing a minimum of one individual were removed from archeological site CA-SDI–4358 (W–108/954), Carlsbad (Encinitas Quadrangle), San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On June 29, 2007, the collection was accessioned by the San Diego Archaeological Center, and was assessed for objects eligible for repatriation in accordance with NAGPRA. No known individual was identified. No associated funerary objects are present.

In 1987 and 1988, human remains representing a minimum of one individual were removed from archeological site CA-SDI–4609 within Sorrento Valley, San Diego (Del Mar Quadrangle), San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On June 29, 2007, the collection was accessioned by the San Diego Archaeological Center, and was assessed for objects eligible for repatriation in accordance with NAGPRA. No known individual was identified. The three associated funerary objects are soil samples.

No lineal descendants have been identified. Geographic affiliation is consistent with the historically documented Kumeyaay Nation traditional tribal area. The burials have been attributed to the proto-historic period that has been associated with the cultural antecedents of the Kumeyaay Nation in the region.

The Kumeyaay Nation is represented by the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California); and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Officials of the San Diego Archaeological Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the San Diego Archaeological Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the San Diego Archaeological Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Kumeyaay Nation, represented by the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California); and Viejas (Baron Long)

Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Cindy Stankowski, San Diego Archaeological Center, 16666 San Pasqual Valley Road, Escondido, CA 92027–7001, telephone (760) 291–0370, before November 6, 2008. Repatriation of the human remains and associated funerary objects to the Kumeyaay Nation, on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California); and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California, may proceed after that date if no additional claimants come forward.

The San Diego Archaeological Center is responsible for notifying the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California); and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: September 10, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23697 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Texas Parks and Wildlife Department, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Texas Parks and Wildlife Department, Austin, TX. The human remains and associated funerary objects were removed from Lake Quitman, Wood County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Texas Parks and Wildlife Department professional staff in consultation with representatives of the Caddo Nation of Oklahoma.

In the 1960s, human remains representing a minimum of one individual were removed from a known Caddo cemetery site (41WD60), at the Quitman Lake Dam area in Wood County, TX, by person(s) unknown. At some point thereafter, the collection came into the possession of the Wood County Commissioners Court. On January 14, 1976, the Wood County Commissioners Court donated the collection to the Texas Parks and Wildlife Department. No known individual was identified. The 22 associated funerary objects are 19 ceramic vessels, 2 arrow points, and a group of ceramic sherds (approximately 2,249).

The Caddo Indians historically occupied northeast Texas, northwest Louisiana, southwest Arkansas, and southeast Oklahoma. The Caddo have a long history in northeast Texas, with the earliest identifiable Caddo sites dating to around A.D. 800, and developed directly out of the Woodland period populations of this region. The Caddo Indians were forcibly removed from Texas in the 19th century.

On July 6 and 7, 2005, Texas Parks and Wildlife Department archeologists and Caddo Nation representatives made an assessment of the human remains and associated funerary objects and found the human remains and associated funerary objects are affiliated with the Caddo. Aside from one untyped vessel, the complete vessels in this collection have been identified as LaRue Neck Banded (n=1), Womack Engraved (n=1), McKinney Plain (n=2), and Ripley Engraved (n=14), each of which are associated with the Late Caddo Period in northeast Texas. Specifically, LaRue Neck Banded ceramics have been dated to A.D.1430–1680. Ripley Engraved ceramics date to A.D. 1430–1680 and are typical of the Titus Phase in northeast Texas. Perttula (2004:401- 404) identifies Ripley Engraved as a common ceramic in Titus Phase burials and since these are complete vessels (although in some cases reconstructed) lends itself to this interpretation. LaRue Neck Banded ceramics are generally considered utilitarian vessels, although better examples of this ceramic type may have been traded. Although LaRue Neck Banded and McKinney Plain ceramics are not specifically singled out as mortuary items, their being relatively intact and removed from what has been identified as a Caddo cemetery indicate that they were intentionally interred, probably as a mortuary offering.

Officials of the Texas Parks and Wildlife Department have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the Texas Parks and Wildlife Department also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 22 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Texas Parks and Wildlife Department have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of

shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Caddo Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Aina Dodge, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX 78744, telephone (512) 389–4876, before November 6, 2008. Repatriation of the human remains and associated funerary objects to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

Texas Parks and Wildlife Department is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: September 10, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23680 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: San Diego Archaeological Center, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the San Diego Archaeological Center, San Diego, CA. The human remains were removed from the archeological site CA-SDI–11,068A, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by San Diego Archaeological Center professional staff in consultation with representatives of the Luiseno Nation, on behalf of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Luiseno Mission Indians of California.

In 1989, human remains representing a minimum of one individual were removed from archeological site CA-SDI–11,068A, San Marcos, San Diego County, CA, as part of an archeological excavation performed in compliance with the California Environmental Quality Act (CEQA). On May 10, 2006, the collection was accessioned by the San Diego Archaeological Center, and assessed for objects eligible for repatriation in accordance with NAGPRA. No known individual was identified. No associated funerary objects are present.

No lineal descendants have been identified. Geographic affiliation is consistent with the historically documented Luiseno Nation traditional tribal area. The burials have been attributed to the proto-historic period that has been associated with the cultural antecedents of the Luiseno Nation in the region. The Luiseno Nation is represented by the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Luiseno Mission Indians of California.

Officials of the San Diego Archaeological Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the San Diego Archaeological Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Luiseno Nation, which is represented by the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Luiseno Mission Indians of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Cindy Stankowski, San Diego Archaeological Center, 16666 San Pasqual Valley Road, Escondido, CA 92027–7001, telephone (760) 291–0370, before November 6, 2008. Repatriation of the human remains to the Luiseno Nation, on behalf of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Luiseno Mission Indians of California may proceed after that date if no additional claimants come forward.

The San Diego Archaeological Center is responsible for notifying the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; Twenty-Nine Palms Band of Luiseno Mission Indians of California; and San Luis Rey Band of Mission Indians, a non-federally recognized Indian group, that this notice has been published.

Dated: September 10, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–23692 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 20, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 22, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Cochise County

Chiricahua National Monument Historic Designed Landscape, (Historic Park Landscapes in National and State Parks MPS) 12856 E. Rhyolite Canyon Rd., Willcox, 08001020

COLORADO

Weld County

Clubhouse—Student Union, (New Deal Resources on Colorado's Eastern Plains MPS) Between 18th & 19th Sts., & 8th & 10th Aves., Greeley, 08001021

LOUISIANA

Assumption Parish

LaBarre House, 4371 LA 1, Napoleonville, 08001019

MARYLAND

Montgomery County

Krieger, Seymour, House, 9739 Brigadoon Dr., Bethesda, 08001022

MISSOURI

Greene County

Ambassador Apartments, (Springfield MPS) 1235 E. Elm St., Springfield, 08001023

Jasper County

Inter-State Grocer Company Building, (Historic Resources of Joplin, Missouri) 1027–1035 S. Main St., Joplin, 08001024

St. Louis Independent City

Farm and Home Savings and Loan Association, 1001 Locust St., St. Louis (Independent City), 08001025

WASHINGTON

Pierce County

McChord Field Historic District, McChord AFB, Tacoma, 08001026

A request for removal has been made for the following resource:

SOUTH DAKOTA

McPherson County

Leola Post Office, 741 Sherman St., Leola, 05000627

[FR Doc. E8–23663 Filed 10–6–08; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11404]

RIN 1210–ZA12

Adoption of Amendment to Prohibited Transaction Exemption 2006–06; (PTE 2006–06) For Services Provided in Connection With the Termination of Abandoned Individual Account Plans

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 2006–06.

SUMMARY: This document amends PTE 2006–06 (71 FR 20856, Apr. 21, 2006), a prohibited transaction class exemption issued under the Employee Retirement Income Security Act of 1974 (ERISA). Among other things, PTE 2006–06 permits a ''qualified termination administrator'' (QTA) of an individual account plan that has been abandoned by its sponsoring employer to select itself to provide services to the plan in connection with the plan's termination, and to pay itself fees for those services. In response to changes to the Internal Revenue Code of 1986 (the Code) enacted as part of the Pension Protection Act (PPA) of 2006, PTE 2006–06 is amended to require, as a condition of relief under the exemption, that benefits for a missing, designated nonspouse beneficiary be directly rolled over into an inherited individual retirement plan that fully complies with Code requirements. This amendment also conforms to the Department's final rule amending regulations concerning the Termination of Abandoned Individual Account Plans at 29 CFR 2578.1 (the QTA Regulation), and the Safe Harbor for Distributions from Terminated Individual Account Plans at 29 CFR 2550.404a–3 (the Safe Harbor Regulation), which appears elsewhere in this issue of the **Federal Register**. The amendment to the class exemption affects plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

DATES: *Effective Date:* The class exemption is effective November 6, 2008.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8545 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 15, 2007, a notice was published in the **Federal Register** (72 FR 7461) of the pendency before the Department of a proposed amendment to PTE 2006–06. This class exemption (which was granted in connection with the Department's QTA Regulation, the Department's Safe Harbor Regulation and the Department's regulation relating to the Special Terminal Report for Abandoned Individual Account Plans at 29 CFR 2520.103–13,) provides an exemption from the restrictions of section 406(a)(1)(A) through (D), section 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code.

The Department is granting the amendment on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1] The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. No comments were received by the Department, nor were there any requests for a public hearing, in connection with the proposal. Accordingly, the amendment to the class exemption is adopted without change.

The Department amends the class exemption to reflect amendments to the

[1] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. app. at 214 (2000) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

Code that were adopted by enactment of the Pension Protection Act (PPA) of 2006 (Pub. L. 109–280, Aug. 17, 2006). Among other things, section 829 of the PPA amended Code section 402(c) to permit the direct rollover of a deceased plan participant's benefit from an eligible retirement plan to an individual retirement plan established for the designated nonspouse beneficiary of such participant. In this connection, the Department amends its regulatory safe harbor for distributions from a terminated individual account plan, including an abandoned plan, to require that a deceased participant's benefit be directly rolled over to an inherited individual retirement plan established to receive a distribution on behalf of a missing, designated nonspouse beneficiary. Similarly, the Department, on its own motion, amends PTE 2006–06 to ensure conformity with the amended Abandoned Plan Regulations.[2]

As noted in the proposed amendment, the Department interprets the term ''account'' (other than an individual retirement plan) in section I(b)(1)(ii) and the term ''other account'' in section I(b)(3) and (4) of PTE 2006–06 to include an ''inherited individual retirement plan'' as used in the amended Safe Harbor Regulation in the context of a distribution to a nonspouse beneficiary that does not qualify for small account treatment under the regulatory safe harbor. Consequently, the exemption, prior to amendment, provided relief to a QTA that selected itself as the provider of an inherited individual retirement plan under the Safe Harbor Regulation. Accordingly, the Department has amended the covered transactions described in section I(b)(ii) of PTE 2006–06 to expressly provide that a distribution on behalf of a missing nonspouse beneficiary would qualify for exemptive relief only if directly rolled into an individual retirement plan that satisfies the requirements of new section 402(c)(11) of the Code.[3]

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

Paperwork Reduction Act

The information collections included in PTE 2006–06 are currently approved, together with information collections included in the safe harbor and termination of abandoned plans regulations, by the Office of Management and Budget (OMB) under OMB control number 1210–0127. This approval is currently scheduled to expire on June 20, 2009. The specific burden for the exemption includes a recordkeeping requirement for a QTA that terminates an abandoned plan and chooses to distribute the account balances of nonresponsive participants and beneficiaries into proprietary or affiliated individual retirement plans. These amendments do not make any changes to the information collections of the exemption. Accordingly, the Department has not made a submission for OMB approval in connection with the amendments.

Background

PTE 2006–06 is comprised of five sections. Section I describes the transactions that are covered by the exemption. Section II contains conditions for the provision of termination services and the receipt of fees. Section III contains the conditions for distributions. Section IV contains the general recordkeeping provisions imposed on the QTA, and section V contains definitions.

Section I(b) of the exemption currently provides relief from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for a QTA to use its authority in connection with the termination of an abandoned individual account plan to designate itself or an affiliate as provider of an individual retirement plan[4] or other account to receive the account balance of a participant or beneficiary who does not provide direction as to the disposition of such assets. The other accounts currently permitted by the exemption include: An account (other than an individual retirement plan, as described in paragraph (d)(1)(ii) of the Safe Harbor Regulation) for a distribution made to a distributee other than a participant or spouse; or an interest-bearing, federally insured bank or savings association account maintained in the name of the participant or beneficiary for distributions of $1,000 or less, as described in section (d)(1)(iii) of the Safe Harbor Regulation.

C. Discussion of the Amendment

Section 829 of the PPA amended section 402(c) of the Code to permit the direct rollover of a deceased participant's benefit from an eligible retirement plan to an individual retirement plan established on behalf of a designated nonspouse beneficiary of such participant.[5] These rollover distributions would not trigger immediate tax consequences and mandatory tax withholding for the nonspouse beneficiary. Accordingly, in light of the favorable changes to the Code, the Department is amending both PTE 2006–06 and the Safe Harbor Regulation to require that a deceased participant's benefit be directly rolled over to an inherited individual retirement plan established to receive the distribution on behalf of a missing, designated nonspouse beneficiary.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary,

[2] See in this issue of the **Federal Register** Amendments to Safe Harbor for Distributions from Terminated Individual Account Plans and Termination of Abandoned Individual Account Plans to Require Inherited Individual Retirement Plans for Missing Nonspouse Beneficiaries.

[3] See also I.R.S Notice 2007–07, 2007–5 I.R.B. 395.

[4] For purposes of the class exemption, the term ''individual retirement plan'' means an individual retirement plan described in section 7701(a)(37) of the Code.

[5] Section 829 of the Pension Protection Act requires that the individual retirement plan established on behalf of a nonspouse beneficiary must be treated as an inherited individual retirement plan within the meaning of Code § 408(d)(3)(C) and must be subject to the applicable mandatory distribution requirement of Code § 401(a)(9)(B).

or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary act prudently and discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, the Department finds that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans;

(4) The amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), the Department amends PTE 2006–06 as set forth below:

Exemption * * *

I. Covered Transactions * * *

(b) * * *

(1) Designate itself or an affiliate as: (i) Provider of an individual retirement plan; (ii) provider, in the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, of an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary under the circumstances described in section (d)(1)(ii) of the Safe Harbor Regulation for Terminated Plans (29 CFR section 2550.404a–3) (the Safe Harbor Regulation); or (iii) provider of an interest bearing, federally insured bank or savings association account maintained in the name of the participant or beneficiary, in the case of a distribution described in section (d)(1)(iii) of the Safe Harbor Regulation, for the distribution of the account balance of the participant or beneficiary of the abandoned individual account plan who does not provide direction as to the disposition of such assets;

V. Definitions * * *

(b) The term ''individual retirement plan'' means an individual retirement plan described in section 7701(a)(37) of the Code. For purposes of section III of this exemption, the term ''individual retirement plan'' shall also include an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive a distribution on behalf of a nonspouse beneficiary. Notwithstanding the foregoing, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA.

Signed at Washington, DC, this 26th day of September, 2008.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations.

[FR Doc. E8–23429 Filed 10–6–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB Program for Alaska.

The following change has occurred since the publication of the last notice regarding the State's EB status:

• Based on data reported by the Bureau of Labor Statistics on September 19, 2008, Alaska triggered ''off'' EB. Alaska's 3-month total unemployment rate for June, July and August fell to 109% of the prior year and 106% of the second prior year for the same period. This causes Alaska to be triggered ''off'' an EB period. After the week ending October 11, 2008, workers who exhaust their regular UI benefits will no longer be eligible to collect up to an additional 13 weeks of UI benefits under this program.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing a claim for EB of the forthcoming end of the EB period and its effect on the individual's rights to EB (20 CFR 615.13(c)(4)).

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 29th day of September, 2008.

Brent R. Orrell,

Deputy Assistant Secretary of Labor for Employment and Training.

[FR Doc. E8–23637 Filed 10–6–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for North Carolina

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB Program for North Carolina.

The following change has occurred since the publication of the last notice regarding the State's EB status:

• Based on data reported by the Bureau of Labor Statistics on September 19, 2008, North Carolina's 3-month

seasonally adjusted total unemployment rate rose to the 6.5 percent threshold and exceeded 110 percent of the corresponding rate in the prior year. This causes North Carolina to be triggered ''on'' to an EB period beginning October 5, 2008.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 29th day of September, 2008.

Brent R. Orrell,

Deputy Assistant Secretary of Labor for Employment and Training.

[FR Doc. E8–23636 Filed 10–6–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year (FY) 2009.

DATES: Effective Date: The annual list of labor surplus areas is effective October 1, 2008, for all states, the District of Columbia, and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Telephone: (202) 693–2784 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. These regulations require the Employment and Training Administration (ETA) to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations, ETA is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Eligible Labor Surplus Areas

Procedures for Classifying Labor Surplus Areas

The Department of Labor (DOL) issues the labor surplus area list on a fiscal year basis. The list becomes effective each October 1 and remains in effect through the following September 30. The reference period used in preparing the current list was January 2006 through December 2007. The national average unemployment rate during this period was 4.7 percent. Applying the ''floor'' concept (see regulations), the unemployment rate for an area to qualify as having a surplus of labor for FY 2009 is 6.0 percent. Therefore, areas included on the FY 2009 labor surplus area list had an average unemployment rate of 6.0 percent or above during the reference period. This year the balance of county areas are not listed since all of the balance of county areas eligible to be a labor surplus area were in counties that also qualified as a labor surplus area. A second listing would be unnecessarily redundant and potentially confusing. The FY 2009 labor surplus area list can be accessed at: *http://www.doleta.gov/programs/lsa.cfm.*

Petition for Exceptional Circumstance Consideration

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment, which is not temporary or seasonal and was not reflected in the data for the 2-year reference period. Under the program's exceptional circumstance procedures, labor surplus area classifications can be made for civil jurisdictions, Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the state workforce agency must submit a petition requesting such classification to the DOL ETA. The current criteria for an exceptional circumstance classification are: An area's unemployment rate of at least 6.0 percent for each of the three most recent months; a projected unemployment rate of at least 6.0 percent for each of the next 12 months; and documentation that the exceptional circumstance event has already occurred. The state workforce agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas. The addresses of state workforce agencies are available on the ETA Web site at: *http://www.doleta.gov/programs/lsa.cfm.* State workforce agencies may submit petitions in electronic format to dais.anthony@dol.gov, or in hard copy to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Data collection for the petition is approved under OMB 1205–0207, expiration date March 31, 2011.

Signed at Washington, DC this 30th day of September, 2008.

Brent R. Orrell,

Deputy Assistant Secretary for Employment and Training Administration.

LABOR SURPLUS AREAS

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
ALABAMA	
BULLOCK COUNTY	BULLOCK COUNTY
DALLAS COUNTY	DALLAS COUNTY
LOWNDES COUNTY	LOWNDES COUNTY
PERRY COUNTY	PERRY COUNTY
WILCOX COUNTY	WILCOX COUNTY
ALASKA	
ALEUTIANS EAST BOROUGH	ALEUTIANS EAST BOROUGH
BETHEL CENSUS AREA	BETHEL CENSUS AREA
DENALI BOROUGH	DENALI BOROUGH
DILLINGHAM CENSUS AREA	DILLINGHAM CENSUS AREA
FAIRBANKS CITY	FAIRBANKS CITY IN
	FAIRBANKS NORTH STAR BOROUGH
HAINES BOROUGH	HAINES BOROUGH
KENAI PENINSULA BOROUGH	KENAI PENINSULA BOROUGH
KODIAK ISLAND BOROUGH	KODIAK ISLAND BOROUGH
MATANUSKA-SUSITNA BOROUGH	MATANUSKA-SUSITNA BOROUGH
NOME CENSUS AREA	NOME CENSUS AREA
NORTH SLOPE BOROUGH	NORTH SLOPE BOROUGH
NORTHWEST ARCTIC BOROUGH	NORTHWEST ARCTIC BOROUGH
PRINCE OF WALES OUTER KETCHIKAN	PRINCE OF WALES OUTER KETCHIKAN
SKAGWAY-HOONAH-ANGOON CEN AREA	SKAGWAY-HOONAH-ANGOON CEN AREA
SOUTHEAST FAIRBANKS CENSUS AREA	SOUTHEAST FAIRBANKS CENSUS AREA
VALDEZ CORDOVA CENSUS AREA	VALDEZ CORDOVA CENSUS AREA
WADE HAMPTON CENSUS AREA	WADE HAMPTON CENSUS AREA
WRANGELL-PETERSBURG CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA
YAKUTAT BOROUGH	YAKUTAT BOROUGH
YUKON-KOYUKUK CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
ARIZONA	
APACHE COUNTY	APACHE COUNTY
NAVAJO COUNTY	NAVAJO COUNTY
SANTA CRUZ COUNTY	SANTA CRUZ COUNTY
YUMA CITY	YUMA CITY IN
	YUMA COUNTY
YUMA COUNTY	YUMA COUNTY
ARKANSAS	
ARKANSAS COUNTY	ARKANSAS COUNTY
ASHLEY COUNTY	ASHLEY COUNTY
BRADLEY COUNTY	BRADLEY COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHICOT COUNTY	CHICOT COUNTY
CLAY COUNTY	CLAY COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
CRITTENDEN COUNTY	CRITTENDEN COUNTY
	WEST MEMPHIS CITY
CROSS COUNTY	CROSS COUNTY
DALLAS COUNTY	DALLAS COUNTY
DESHA COUNTY	DESHA COUNTY
DREW COUNTY	DREW COUNTY
GREENE COUNTY	GREENE COUNTY
HOT SPRINGS CITY	HOT SPRINGS CITY IN
	GARLAND COUNTY
INDEPENDENCE COUNTY	INDEPENDENCE COUNTY
IZARD COUNTY	IZARD COUNTY
JACKSON COUNTY	JACKSON COUNTY
JACKSONVILLE CITY	JACKSONVILLE CITY IN
	PULASKI COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
LAFAYETTE COUNTY	LAFAYETTE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
MONROE COUNTY	MONROE COUNTY
OUACHITA COUNTY	OUACHITA COUNTY
PHILLIPS COUNTY	PHILLIPS COUNTY
PINE BLUFF CITY	PINE BLUFF CITY IN JEFFERSON COUNTY
POINSETT COUNTY	POINSETT COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SHARP COUNTY	SHARP COUNTY
ST. FRANCIS COUNTY	ST. FRANCIS COUNTY
UNION COUNTY	UNION COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WEST MEMPHIS CITY	WEST MEMPHIS CITY IN CRITTENDEN COUNTY
WHITE COUNTY	WHITE COUNTY
WOODRUFF COUNTY	WOODRUFF COUNTY
CALIFORNIA	
ADELANTO CITY, CA	ADELANTO CITY, CA IN SAN BERNARDINO COUNTY
ALPINE COUNTY	ALPINE COUNTY
ATWATER CITY, CA	ATWATER CITY, CA IN MERCED COUNTY
BALDWIN PARK CITY	BALDWIN PARK CITY IN LOS ANGELES COUNTY
BANNING CITY	BANNING CITY IN RIVERSIDE COUNTY
BEAUMONT CITY, CA	BEAUMONT CITY, CA IN RIVERSIDE COUNTY
BELL CITY	BELL CITY IN LOS ANGELES COUNTY
BELL GARDENS CITY	BELL GARDENS CITY IN LOS ANGELES COUNTY
BUTTE COUNTY	BUTTE COUNTY
CALAVERAS COUNTY	CALAVERAS COUNTY
CALEXICO CITY	CALEXICO CITY IN IMPERIAL COUNTY
CERES CITY	CERES CITY IN STANISLAUS COUNTY
CHICO CITY	CHICO CITY IN BUTTE COUNTY
COACHELLA CITY	COACHELLA CITY IN RIVERSIDE COUNTY
COLUSA COUNTY	COLUSA COUNTY
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY
DEL NORTE COUNTY	DEL NORTE COUNTY
DELANO CITY	DELANO CITY IN KERN COUNTY
EAST PALO ALTO CITY	EAST PALO ALTO CITY IN SAN MATEO COUNTY
EL CAJON CITY	EL CAJON CITY IN SAN DIEGO COUNTY
EL CENTRO CITY	EL CENTRO CITY IN IMPERIAL COUNTY
EL MONTE CITY	EL MONTE CITY IN LOS ANGELES COUNTY
EUREKA CITY	EUREKA CITY IN HUMBOLDT COUNTY
FRESNO CITY	FRESNO CITY IN FRESNO COUNTY
FRESNO COUNTY	FRESNO COUNTY
GILROY CITY	GILROY CITY IN SANTA CLARA COUNTY
GLENN COUNTY	GLENN COUNTY
HANFORD CITY	HANFORD CITY IN KINGS COUNTY
HAWTHORNE CITY	HAWTHORNE CITY IN LOS ANGELES COUNTY
HEMET CITY	HEMET CITY IN RIVERSIDE COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
HESPERIA CITY	HESPERIA CITY IN SAN BERNARDINO COUNTY
HIGHLAND CITY	HIGHLAND CITY IN SAN BERNARDINO COUNTY
HOLISTER CITY	HOLISTER CITY IN SAN BENITO COUNTY
HUNTINGTON PARK CITY	HUNTINGTON PARK CITY IN LOS ANGELES COUNTY
IMPERIAL BEACH CITY	IMPERIAL BEACH CITY IN SAN DIEGO COUNTY
IMPERIAL COUNTY	IMPERIAL COUNTY
INDIO CITY	INDIO CITY IN RIVERSIDE COUNTY
INGLEWOOD CITY	INGLEWOOD CITY IN LOS ANGELES COUNTY
KERN COUNTY	KERN COUNTY
KINGS COUNTY	KINGS COUNTY
LAKE COUNTY	LAKE COUNTY
LANCASTER CITY	LANCASTER CITY IN LOS ANGELES COUNTY
LASSEN COUNTY	LASSEN COUNTY
LINCOLN CITY, CA	LINCOLN CITY, CA IN PLACER COUNTY
LOMPOC CITY	LOMPOC CITY IN SANTA BARBARA COUNTY
LOS BANOS CITY	LOS BANOS CITY IN MERCED COUNTY
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY
MADERA CITY	MADERA CITY IN MADERA COUNTY
MADERA COUNTY	MADERA COUNTY
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGELES COUNTY
MERCED CITY	MERCED CITY IN MERCED COUNTY
MERCED COUNTY	MERCED COUNTY
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY
MODOC COUNTY	MODOC COUNTY
MONTEREY COUNTY	MONTEREY COUNTY
MORENO VALLEY CITY	MORENO VALLEY CITY IN RIVERSIDE COUNTY
MORGAN HILL CITY	MORGAN HILL CITY IN SANTA CLARA COUNTY
NATIONAL CITY	NATIONAL CITY IN SAN DIEGO COUNTY
OAKLAND CITY	OAKLAND CITY IN ALAMEDA COUNTY
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY
PALMDALE CITY	PALMDALE CITY IN LOS ANGELES COUNTY
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY
PITTSBURG CITY	PITTSBURG CITY IN CONTRA COSTA COUNTY
PLUMAS COUNTY	PLUMAS COUNTY
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY
REDDING CITY	REDDING CITY IN SHASTA COUNTY
RIALTO CITY	RIALTO CITY IN SAN BERNARDINO COUNTY
RICHMOND CITY	RICHMOND CITY IN CONTRA COSTA COUNTY
SACRAMENTO CITY	SACRAMENTO CITY IN

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
	SACRAMENTO COUNTY
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY
SAN BENITO COUNTY	SAN BENITO COUNTY
SAN BERNARDINO CITY	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY
SAN JACINTO CITY	SAN JACINTO CITY IN RIVERSIDE COUNTY
SAN JOAQUIN COUNTY	SAN JOAQUIN COUNTY
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY
SANTA ANA CITY	SANTA ANA CITY IN ORANGE COUNTY
SANTA MARIA CITY	SANTA MARIA CITY IN SANTA BARBARA COUNTY
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY
SHASTA COUNTY	SHASTA COUNTY
SIERRA COUNTY	SIERRA COUNTY
SISKIYOU COUNTY	SISKIYOU COUNTY
SOLEDAD CITY, CA	SOLEDAD CITY, CA IN MONTEREY COUNTY
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY
STANISLAUS COUNTY	STANISLAUS COUNTY
STANTON CITY	STANTON CITY IN ORANGE COUNTY
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY
SUTTER COUNTY	SUTTER COUNTY
TEHAMA COUNTY	TEHAMA COUNTY
TRINITY COUNTY	TRINITY COUNTY
TULARE CITY	TULARE CITY IN TULARE COUNTY
TULARE COUNTY	TULARE COUNTY
TUOLUMNE COUNTY	TUOLUMNE COUNTY
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY
TWENTYNINE PALMS CITY	TWENTYNINE PALMS CITY IN SAN BERNARDINO COUNTY
VALLEJO CITY	VALLEJO CITY IN SOLANO COUNTY
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY
WEST SACRAMENTO CITY	WEST SACRAMENTO CITY IN YOLO COUNTY
WOODLAND CITY	WOODLAND CITY IN YOLO COUNTY
YUBA CITY	YUBA CITY IN SUTTER COUNTY
YUBA COUNTY	YUBA COUNTY
COLORADO	
COMMERCE CITY CITY, CO	COMMERCE CITY CITY, CO IN ADAMS COUNTY
CONEJOS COUNTY	CONEJOS COUNTY
COSTILLA COUNTY	COSTILLA COUNTY
CROWLEY COUNTY	CROWLEY COUNTY
PUEBLO CITY	PUEBLO CITY IN PUEBLO COUNTY
CONNECTICUT	
BRIDGEPORT CITY	BRIDGEPORT CITY
HARTFORD CITY	HARTFORD CITY
NEW BRITAIN CITY	NEW BRITAIN CITY
NEW HAVEN CITY	NEW HAVEN CITY
WATERBURY CITY	WATERBURY CITY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
WINDHAM TOWN	WINDHAM TOWN
FLORIDA	
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY
HENDRY COUNTY	HENDRY COUNTY
GEORGIA	
AUGUSTA CITY	AUGUSTA CITY IN RICHMOND COUNTY
BEN HILL COUNTY	BEN HILL COUNTY
BURKE COUNTY	BURKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHATTAHOOCHEE COUNTY	CHATTAHOOCHEE COUNTY
ELBERT COUNTY	ELBERT COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HART COUNTY	HART COUNTY
JEFF DAVIS COUNTY	JEFF DAVIS COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JENKINS COUNTY	JENKINS COUNTY
MACON CITY	MACON CITY IN BIBB COUNTY JONES COUNTY
MACON COUNTY	MACON COUNTY
MC DUFFIE COUNTY	MC DUFFIE COUNTY
MERIWETHER COUNTY	MERIWETHER COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
STEWART COUNTY	STEWART COUNTY
SUMTER COUNTY	SUMTER COUNTY
TALBOT COUNTY	TALBOT COUNTY
TALIAFERRO COUNTY	TALIAFERRO COUNTY
TELFAIR COUNTY	TELFAIR COUNTY
TURNER COUNTY	TURNER COUNTY
UPSON COUNTY	UPSON COUNTY
WARREN COUNTY	WARREN COUNTY
WILKES COUNTY	WILKES COUNTY
IDAHO	
BENEWAH COUNTY	BENEWAH COUNTY
BOUNDARY COUNTY	BOUNDARY COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
ILLINOIS	
ALEXANDER COUNTY	ALEXANDER COUNTY
ALTON CITY	ALTON CITY IN MADISON COUNTY
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY
BELVIDERE CITY, IL	BELVIDERE CITY, IL IN BOONE COUNTY
BOONE COUNTY	BOONE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CALUMET CITY	CALUMET CITY IN COOK COUNTY
CARPENTERSVILLE CITY	CARPENTERSVILLE CITY IN KANE COUNTY
CHICAGO HEIGHTS CITY	CHICAGO HEIGHTS CITY IN COOK COUNTY
CICERO CITY	CICERO CITY IN COOK COUNTY
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY
DECATUR CITY	DECATUR CITY IN MACON COUNTY
EAST ST. LOUIS CITY	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
FAYETTE COUNTY	FAYETTE COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GALLATIN COUNTY	GALLATIN COUNTY
GRANITE CITY	GRANITE CITY IN MADISON COUNTY
HARDIN COUNTY	HARDIN COUNTY
HARVEY CITY	HARVEY CITY IN COOK COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY
KANKAKEE COUNTY	KANKAKEE COUNTY
MARION COUNTY	MARION COUNTY
MASON COUNTY	MASON COUNTY
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NORTH CHICAGO CITY	NORTH CHICAGO CITY IN LAKE COUNTY
PERRY COUNTY	PERRY COUNTY
POPE COUNTY	POPE COUNTY
PULASKI COUNTY	PULASKI COUNTY
ROCKFORD CITY	ROCKFORD CITY IN WINNEBAGO COUNTY
ROUND LAKE BEACH VILLAGE	ROUND LAKE BEACH VILLAGE IN LAKE COUNTY
SALINE COUNTY	SALINE COUNTY
ST. CLAIR COUNTY	ST. CLAIR COUNTY
UNION COUNTY	UNION COUNTY
VERMILION COUNTY	VERMILION COUNTY
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY
INDIANA	
ANDERSON CITY	ANDERSON CITY IN MADISON COUNTY
BLACKFORD COUNTY	BLACKFORD COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
EAST CHICAGO CITY	EAST CHICAGO CITY IN LAKE COUNTY
ELKHART CITY	ELKHART CITY IN ELKHART COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
GARY CITY	GARY CITY IN LAKE COUNTY
GRANT COUNTY	GRANT COUNTY
HAMMOND CITY	HAMMOND CITY IN LAKE COUNTY
HOWARD COUNTY	HOWARD COUNTY
KOKOMO CITY	KOKOMO CITY IN HOWARD COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
MADISON COUNTY	MADISON COUNTY
MARION CITY	MARION CITY IN GRANT COUNTY
MICHIGAN CITY	MICHIGAN CITY IN LA PORTE COUNTY
MUNCIE CITY	MUNCIE CITY IN DELAWARE COUNTY
ORANGE COUNTY	ORANGE COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
STARKE COUNTY	STARKE COUNTY
STEUBEN COUNTY	STEUBEN COUNTY
TERRE HAUTE CITY	TERRE HAUTE CITY IN VIGO COUNTY
VERMILLION COUNTY	VERMILLION COUNTY
IOWA	
APPANOOSE COUNTY	APPANOOSE COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
LEE COUNTY	LEE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
KANSAS	
KANSAS CITY KN	KANSAS CITY KN IN WYANDOTTE COUNTY
LEAVENWORTH CITY	LEAVENWORTH CITY IN LEAVENWORTH COUNTY
LINN COUNTY	LINN COUNTY
WYANDOTTE COUNTY	WYANDOTTE COUNTY
KENTUCKY	
ALLEN COUNTY	ALLEN COUNTY
BALLARD COUNTY	BALLARD COUNTY
BATH COUNTY	BATH COUNTY
BELL COUNTY	BELL COUNTY
BOYLE COUNTY	BOYLE COUNTY
BREATHITT COUNTY	BREATHITT COUNTY
BRECKINRIDGE COUNTY	BRECKINRIDGE COUNTY
BUTLER COUNTY	BUTLER COUNTY
CARLISLE COUNTY	CARLISLE COUNTY
CARTER COUNTY	CARTER COUNTY
CASEY COUNTY	CASEY COUNTY
CHRISTIAN COUNTY	CHRISTIAN COUNTY HOPKINSVILLE CITY
CLAY COUNTY	CLAY COUNTY
CRITTENDEN COUNTY	CRITTENDEN COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
EDMONSON COUNTY	EDMONSON COUNTY
ELLIOTT COUNTY	ELLIOTT COUNTY
ESTILL COUNTY	ESTILL COUNTY
FLEMING COUNTY	FLEMING COUNTY
FLOYD COUNTY	FLOYD COUNTY
FULTON COUNTY	FULTON COUNTY
GRAVES COUNTY	GRAVES COUNTY
GRAYSON COUNTY	GRAYSON COUNTY
GREEN COUNTY	GREEN COUNTY
HARLAN COUNTY	HARLAN COUNTY
HART COUNTY	HART COUNTY
HICKMAN COUNTY	HICKMAN COUNTY
HOPKINS COUNTY	HOPKINS COUNTY
HOPKINSVILLE CITY	HOPKINSVILLE CITY IN CHRISTIAN COUNTY
JACKSON COUNTY	JACKSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
KNOTT COUNTY	KNOTT COUNTY
KNOX COUNTY	KNOX COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
LESLIE COUNTY	LESLIE COUNTY
LETCHER COUNTY	LETCHER COUNTY
LEWIS COUNTY	LEWIS COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LYON COUNTY	LYON COUNTY
MAGOFFIN COUNTY	MAGOFFIN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MARTIN COUNTY	MARTIN COUNTY
MC CREARY COUNTY	MC CREARY COUNTY
MC LEAN COUNTY	MC LEAN COUNTY
MEADE COUNTY	MEADE COUNTY
MENIFEE COUNTY	MENIFEE COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
MORGAN COUNTY	MORGAN COUNTY
MUHLENBERG COUNTY	MUHLENBERG COUNTY
NICHOLAS COUNTY	NICHOLAS COUNTY
OWSLEY COUNTY	OWSLEY COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
POWELL COUNTY	POWELL COUNTY
PULASKI COUNTY	PULASKI COUNTY
ROCKCASTLE COUNTY	ROCKCASTLE COUNTY
RUSSELL COUNTY	RUSSELL COUNTY
SPENCER COUNTY	SPENCER COUNTY
TODD COUNTY	TODD COUNTY
TRIMBLE COUNTY	TRIMBLE COUNTY
WAYNE COUNTY	WAYNE COUNTY
WHITLEY COUNTY	WHITLEY COUNTY
WOLFE COUNTY	WOLFE COUNTY
LOUISIANA	
EAST CARROLL PARISH	EAST CARROLL PARISH
MOREHOUSE PARISH	MOREHOUSE PARISH
ST. HELENA PARISH	ST. HELENA PARISH
ST. JAMES PARISH	ST. JAMES PARISH
TENSAS PARISH	TENSAS PARISH
WEST CARROLL PARISH	WEST CARROLL PARISH
MAINE	
AROOSTOOK COUNTY	AROOSTOOK COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
PISCATAQUIS COUNTY	PISCATAQUIS COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
MARYLAND	
BALTIMORE CITY	BALTIMORE CITY IN
MASSACHUSETTS	
ADAMS TOWN	ADAMS TOWN IN BERKSHIRE COUNTY
ATHOL TOWN	ATHOL TOWN IN WORCESTER COUNTY
BROCKTON CITY	BROCKTON CITY IN PLYMOUTH COUNTY
BROOKFIELD TOWN	BROOKFIELD TOWN IN WORCESTER COUNTY
CHELSEA CITY	CHELSEA CITY IN SUFFOLK COUNTY
CUMMINGTON TOWN	CUMMINGTON TOWN IN HAMPSHIRE COUNTY
FALL RIVER CITY	FALL RIVER CITY IN BRISTOL COUNTY
FITCHBURG CITY	FITCHBURG CITY IN WORCESTER COUNTY
FLORIDA TOWN	FLORIDA TOWN IN BERKSHIRE COUNTY
GARDNER TOWN	GARDNER TOWN IN WORCESTER COUNTY
HOLYOKE CITY	HOLYOKE CITY IN HAMPDEN COUNTY
LAWRENCE CITY	LAWRENCE CITY IN ESSEX COUNTY
MONROE TOWN	MONROE TOWN IN FRANKLIN COUNTY
NEW BEDFORD CITY	NEW BEDFORD CITY IN BRISTOL COUNTY
PROVINCETOWN TOWN	PROVINCETOWN TOWN IN BARNSTABLE COUNTY
SOUTHBRIDGE TOWN	SOUTHBRIDGE TOWN IN WORCESTER COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN HAMPDEN COUNTY
TEMPLETON TOWN	TEMPLETON TOWN IN WORCESTER COUNTY
TRURO TOWN	TRURO TOWN IN

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
WARREN TOWN	BARNSTABLE COUNTY WARREN TOWN IN WORCESTER COUNTY
WEBSTER TOWN	WEBSTER TOWN IN WORCESTER COUNTY
WELLFLEET TOWN	WELLFLEET TOWN IN BARNSTABLE COUNTY
WESTPORT TOWN	WESTPORT TOWN IN BRISTOL COUNTY
WINCHENDON TOWN	WINCHENDON TOWN IN WORCESTER COUNTY
MICHIGAN	
ALCONA COUNTY	ALCONA COUNTY
ALGER COUNTY	ALGER COUNTY
ALLEGAN COUNTY	ALLEGAN COUNTY
ALPENA COUNTY	ALPENA COUNTY
ANTRIM COUNTY	ANTRIM COUNTY
ARENAC COUNTY	ARENAC COUNTY
BARAGA COUNTY	BARAGA COUNTY
BATTLE CREEK CITY	BATTLE CREEK CITY IN CALHOUN COUNTY
BAY CITY	BAY CITY IN BAY COUNTY
BAY COUNTY	BAY COUNTY
BENZIE COUNTY	BENZIE COUNTY
BERRIEN COUNTY	BERRIEN COUNTY
BLACKMAN CHARTER TOWNSHIP	BLACKMAN CHARTER TOWNSHIP IN JACKSON COUNTY
BRANCH COUNTY	BRANCH COUNTY
BURTON CITY	BURTON CITY IN GENESEE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHARLEVOIX COUNTY	CHARLEVOIX COUNTY
CHEBOYGAN COUNTY	CHEBOYGAN COUNTY
CHESTERFIELD TOWNSHIP	CHESTERFIELD TOWNSHIP IN MACOMB COUNTY
CHIPPEWA COUNTY	CHIPPEWA COUNTY
CLARE COUNTY	CLARE COUNTY
CLINTON TOWNSHIP	CLINTON TOWNSHIP IN MACOMB COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DELTA COUNTY	DELTA COUNTY
DETROIT CITY	DETROIT CITY IN WAYNE COUNTY
EAST LANSING CITY	EAST LANSING CITY IN INGHAM COUNTY
EASTPOINTE CITY	EASTPOINTE CITY IN
EMMET COUNTY	EMMET COUNTY
FLINT CITY	FLINT CITY IN GENESEE COUNTY
FLINT TOWNSHIP	FLINT TOWNSHIP IN GENESEE COUNTY
GENESEE COUNTY	GENESEE COUNTY
GLADWIN COUNTY	GLADWIN COUNTY
GOGEBIC COUNTY	GOGEBIC COUNTY
GRAND RAPIDS CITY	GRAND RAPIDS CITY IN KENT COUNTY
GRAND TRAVERSE COUNTY	GRAND TRAVERSE COUNTY
GRATIOT COUNTY	GRATIOT COUNTY
HARRISON TOWNSHIP	HARRISON TOWNSHIP IN MACOMB COUNTY
HILLSDALE COUNTY	HILLSDALE COUNTY
HOLLAND CITY	HOLLAND CITY IN ALLEGAN COUNTY OTTAWA COUNTY
HOUGHTON COUNTY	HOUGHTON COUNTY
HURON COUNTY	HURON COUNTY
INGHAM COUNTY	INGHAM COUNTY
INKSTER CITY	INKSTER CITY IN

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
	WAYNE COUNTY
IONIA COUNTY	IONIA COUNTY
IOSCO COUNTY	IOSCO COUNTY
IRON COUNTY	IRON COUNTY
JACKSON CITY	JACKSON CITY IN
	JACKSON COUNTY
JACKSON COUNTY	JACKSON COUNTY
KALAMAZOO CITY	KALAMAZOO CITY IN
	KALAMAZOO COUNTY
KALKASKA COUNTY	KALKASKA COUNTY
KEWEENAW COUNTY	KEWEENAW COUNTY
LAKE COUNTY	LAKE COUNTY
LANSING CITY	LANSING CITY IN
	EATON COUNTY
	INGHAM COUNTY
LAPEER COUNTY	LAPEER COUNTY
LENAWEE COUNTY	LENAWEE COUNTY
LINCOLN PARK CITY	LINCOLN PARK CITY IN
	WAYNE COUNTY
LUCE COUNTY	LUCE COUNTY
MACKINAC COUNTY	MACKINAC COUNTY
MACOMB COUNTY	MACOMB COUNTY
MACOMB TOWNSHIP	MACOMB TOWNSHIP IN
	MACOMB COUNTY
MADISON HEIGHTS CITY	MADISON HEIGHTS CITY IN
	OAKLAND COUNTY
MANISTEE COUNTY	MANISTEE COUNTY
MARQUETTE COUNTY	MARQUETTE COUNTY
MASON COUNTY	MASON COUNTY
MECOSTA COUNTY	MECOSTA COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
MISSAUKEE COUNTY	MISSAUKEE COUNTY
MONROE COUNTY	MONROE COUNTY
MONTCALM COUNTY	MONTCALM COUNTY
MONTMORENCY COUNTY	MONTMORENCY COUNTY
MUSKEGON CITY	MUSKEGON CITY IN
	MUSKEGON COUNTY
MUSKEGON COUNTY	MUSKEGON COUNTY
NEWAYGO COUNTY	NEWAYGO COUNTY
OAK PARK CITY	OAK PARK CITY IN
	OAKLAND COUNTY
OAKLAND COUNTY	OAKLAND COUNTY
OCEANA COUNTY	OCEANA COUNTY
OGEMAW COUNTY	OGEMAW COUNTY
ONTONAGON COUNTY	ONTONAGON COUNTY
OSCEOLA COUNTY	OSCEOLA COUNTY
OSCODA COUNTY	OSCODA COUNTY
OTSEGO COUNTY	OTSEGO COUNTY
PONTIAC CITY	PONTIAC CITY IN
	OAKLAND COUNTY
PORT HURON CITY	PORT HURON CITY IN
	ST. CLAIR COUNTY
PRESQUE ISLE COUNTY	PRESQUE ISLE COUNTY
ROSCOMMON COUNTY	ROSCOMMON COUNTY
ROSEVILLE CITY	ROSEVILLE CITY IN
	MACOMB COUNTY
SAGINAW CITY	SAGINAW CITY IN
	SAGINAW COUNTY
SAGINAW COUNTY	SAGINAW COUNTY
SANILAC COUNTY	SANILAC COUNTY
SCHOOLCRAFT COUNTY	SCHOOLCRAFT COUNTY
SHIAWASSEE COUNTY	SHIAWASSEE COUNTY
SOUTHFIELD CITY	SOUTHFIELD CITY IN
	OAKLAND COUNTY
ST CLAIR SHORES CITY	ST CLAIR SHORES CITY IN
	MACOMB COUNTY
ST. CLAIR COUNTY	ST. CLAIR COUNTY
ST. JOSEPH COUNTY	ST. JOSEPH COUNTY
TAYLOR CITY	TAYLOR CITY IN
	WAYNE COUNTY
TUSCOLA COUNTY	TUSCOLA COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
VAN BUREN COUNTY	VAN BUREN COUNTY
WARREN CITY	WARREN CITY IN MACOMB COUNTY
WATERFORD TOWNSHIP	WATERFORD TOWNSHIP IN OAKLAND COUNTY
WAYNE COUNTY	WAYNE COUNTY
WEXFORD COUNTY	WEXFORD COUNTY
WYANDOTTE CITY	WYANDOTTE CITY IN WAYNE COUNTY
WYOMING CITY	WYOMING CITY IN KENT COUNTY
MINNESOTA	
AITKIN COUNTY	AITKIN COUNTY
CASS COUNTY	CASS COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
HUBBARD COUNTY	HUBBARD COUNTY
ITASCA COUNTY	ITASCA COUNTY
KANABEC COUNTY	KANABEC COUNTY
KOOCHICHING COUNTY	KOOCHICHING COUNTY
MAHNOMEN COUNTY	MAHNOMEN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MILLE LACS COUNTY	MILLE LACS COUNTY
PENNINGTON COUNTY	PENNINGTON COUNTY
PINE COUNTY	PINE COUNTY
RED LAKE COUNTY	RED LAKE COUNTY
ROSEAU COUNTY	ROSEAU COUNTY
WADENA COUNTY	WADENA COUNTY
MISSISSIPPI	
ADAMS COUNTY	ADAMS COUNTY
ALCORN COUNTY	ALCORN COUNTY
AMITE COUNTY	AMITE COUNTY
ATTALA COUNTY	ATTALA COUNTY
BENTON COUNTY	BENTON COUNTY
BILOXI CITY	BILOXI CITY IN HARRISON COUNTY
BOLIVAR COUNTY	BOLIVAR COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CARROLL COUNTY	CARROLL COUNTY
CHICKASAW COUNTY	CHICKASAW COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLAIBORNE COUNTY	CLAIBORNE COUNTY
CLARKE COUNTY	CLARKE COUNTY
CLAY COUNTY	CLAY COUNTY
COAHOMA COUNTY	COAHOMA COUNTY
COPIAH COUNTY	COPIAH COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GEORGE COUNTY	GEORGE COUNTY
GREENE COUNTY	GREENE COUNTY
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY
GRENADA COUNTY	GRENADA COUNTY
GULFPORT CITY	GULFPORT CITY IN HARRISON COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARRISON COUNTY	HARRISON COUNTY
HATTIESBURG CITY	HATTIESBURG CITY IN FORREST COUNTY LAMAR COUNTY
HOLMES COUNTY	HOLMES COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
ISSAQUENA COUNTY	ISSAQUENA COUNTY
ITAWAMBA COUNTY	ITAWAMBA COUNTY
JACKSON CITY	JACKSON CITY IN HINDS COUNTY MADISON COUNTY RANKIN COUNTY
JACKSON COUNTY	JACKSON COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
JASPER COUNTY	JASPER COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JEFFERSON DAVIS COUNTY	JEFFERSON DAVIS COUNTY
KEMPER COUNTY	KEMPER COUNTY
LAUDERDALE COUNTY	LAUDERDALE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEAKE COUNTY	LEAKE COUNTY
LEE COUNTY	LEE COUNTY
LEFLORE COUNTY	LEFLORE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LOWNDES COUNTY	LOWNDES COUNTY
MARION COUNTY	MARION COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MERIDIAN CITY	MERIDIAN CITY IN LAUDERDALE COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NOXUBEE COUNTY	NOXUBEE COUNTY
OKTIBBEHA COUNTY	OKTIBBEHA COUNTY
PANOLA COUNTY	PANOLA COUNTY
PEARL RIVER COUNTY	PEARL RIVER COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
PONTOTOC COUNTY	PONTOTOC COUNTY
PRENTISS COUNTY	PRENTISS COUNTY
QUITMAN COUNTY	QUITMAN COUNTY
SHARKEY COUNTY	SHARKEY COUNTY
STONE COUNTY	STONE COUNTY
SUNFLOWER COUNTY	SUNFLOWER COUNTY
TALLAHATCHIE COUNTY	TALLAHATCHIE COUNTY
TATE COUNTY	TATE COUNTY
TIPPAH COUNTY	TIPPAH COUNTY
TISHOMINGO COUNTY	TISHOMINGO COUNTY
TUNICA COUNTY	TUNICA COUNTY
TUPELO CITY	TUPELO CITY IN LEE COUNTY
UNION COUNTY	UNION COUNTY
VICKSBURG CITY	VICKSBURG CITY IN WARREN COUNTY
WALTHALL COUNTY	WALTHALL COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
WILKINSON COUNTY	WILKINSON COUNTY
WINSTON COUNTY	WINSTON COUNTY
YALOBUSHA COUNTY	YALOBUSHA COUNTY
YAZOO COUNTY	YAZOO COUNTY
MISSOURI	
BARTON COUNTY	BARTON COUNTY
BUTLER COUNTY	BUTLER COUNTY
CARTER COUNTY	CARTER COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DENT COUNTY	DENT COUNTY
DUNKLIN COUNTY	DUNKLIN COUNTY
HICKORY COUNTY	HICKORY COUNTY
KANSAS CITY MO	KANSAS CITY MO IN CASS COUNTY CLAY COUNTY JACKSON COUNTY PLATTE COUNTY
LINN COUNTY	LINN COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
MORGAN COUNTY	MORGAN COUNTY
NEW MADRID COUNTY	NEW MADRID COUNTY
PEMISCOT COUNTY	PEMISCOT COUNTY
REYNOLDS COUNTY	REYNOLDS COUNTY
RIPLEY COUNTY	RIPLEY COUNTY
SHANNON COUNTY	SHANNON COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
ST. CLAIR COUNTY	ST. CLAIR COUNTY
ST. LOUIS CITY	ST. LOUIS CITY
STODDARD COUNTY	STODDARD COUNTY
STONE COUNTY	STONE COUNTY
TANEY COUNTY	TANEY COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
MONTANA	
BIG HORN COUNTY	BIG HORN COUNTY
GLACIER COUNTY	GLACIER COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
NEBRASKA	
THURSTON COUNTY	THURSTON COUNTY
NEVADA	
LYON COUNTY	LYON COUNTY
MINERAL COUNTY	MINERAL COUNTY
NYE COUNTY	NYE COUNTY
NEW JERSEY	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY
CAMDEN CITY	CAMDEN CITY IN CAMDEN COUNTY
CAPE MAY COUNTY	CAPE MAY COUNTY
CITY OF ORANGE TOWNSHIP	CITY OF ORANGE TOWNSHIP IN ESSEX COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY
ELIZABETH CITY	ELIZABETH CITY IN UNION COUNTY
GARFIELD CITY	GARFIELD CITY IN BERGEN COUNTY
IRVINGTON TOWNSHIP	IRVINGTON TOWNSHIP IN ESSEX COUNTY
MANCHESTER TOWNSHIP	MANCHESTER TOWNSHIP IN OCEAN COUNTY
MILLVILLE CITY	MILLVILLE CITY IN CUMBERLAND COUNTY
NEWARK CITY	NEWARK CITY IN ESSEX COUNTY
PASSAIC CITY	PASSAIC CITY IN PASSAIC COUNTY
PATERSON CITY	PATERSON CITY IN PASSAIC COUNTY
PERTH AMBOY CITY	PERTH AMBOY CITY IN MIDDLESEX COUNTY
PLAINFIELD CITY	PLAINFIELD CITY IN UNION COUNTY
TRENTON CITY	TRENTON CITY IN MERCER COUNTY
UNION CITY	UNION CITY IN HUDSON COUNTY
VINELAND CITY	VINELAND CITY IN CUMBERLAND COUNTY
NEW MEXICO	
LUNA COUNTY	LUNA COUNTY
MORA COUNTY	MORA COUNTY
NEW YORK	
BRONX COUNTY	BRONX COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
BUFFALO CITY	BUFFALO CITY IN ERIE COUNTY
NIAGARA FALLS CITY	NIAGARA FALLS CITY IN NIAGARA COUNTY
NORTH CAROLINA	
ANSON COUNTY	ANSON COUNTY
BERTIE COUNTY	BERTIE COUNTY
BLADEN COUNTY	BLADEN COUNTY
CALDWELL COUNTY	CALDWELL COUNTY
CASWELL COUNTY	CASWELL COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
EDGECOMBE COUNTY	EDGECOMBE COUNTY ROCKY MOUNT CITY
GRAHAM COUNTY	GRAHAM COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
PERSON COUNTY	PERSON COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
ROBESON COUNTY	ROBESON COUNTY
ROCKINGHAM COUNTY	ROCKINGHAM COUNTY
RUTHERFORD COUNTY	RUTHERFORD COUNTY
SALISBURY CITY	SALISBURY CITY IN ROWAN COUNTY
SCOTLAND COUNTY	SCOTLAND COUNTY
VANCE COUNTY	VANCE COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILSON CITY	WILSON CITY IN WILSON COUNTY
WILSON COUNTY	WILSON COUNTY
NORTH DAKOTA	
BENSON COUNTY	BENSON COUNTY
PEMBINA COUNTY	PEMBINA COUNTY
ROLETTE COUNTY	ROLETTE COUNTY
SIOUX COUNTY	SIOUX COUNTY
OHIO	
ADAMS COUNTY	ADAMS COUNTY
AKRON CITY	AKRON CITY IN SUMMIT COUNTY
ALLEN COUNTY	ALLEN COUNTY
ASHTABULA COUNTY	ASHTABULA COUNTY
BARBERTON CITY	BARBERTON CITY IN SUMMIT COUNTY
BROWN COUNTY	BROWN COUNTY
CANTON CITY	CANTON CITY IN STARK COUNTY
CARROLL COUNTY	CARROLL COUNTY
CLEVELAND CITY	CLEVELAND CITY IN CUYAHOGA COUNTY
COLUMBIANA COUNTY	COLUMBIANA COUNTY
COSHOCTON COUNTY	COSHOCTON COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DAYTON CITY	DAYTON CITY IN MONTGOMERY COUNTY
EAST CLEVELAND CITY	EAST CLEVELAND CITY IN CUYAHOGA COUNTY
ELYRIA CITY	ELYRIA CITY IN LORAIN COUNTY
ERIE COUNTY	ERIE COUNTY
EUCLID CITY	EUCLID CITY IN CUYAHOGA COUNTY
FULTON COUNTY	FULTON COUNTY
GALLIA COUNTY	GALLIA COUNTY
GARFIELD HEIGHTS CITY	GARFIELD HEIGHTS CITY IN

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
	CUYAHOGA COUNTY
GUERNSEY COUNTY	GUERNSEY COUNTY
HARRISON COUNTY	HARRISON COUNTY
HENRY COUNTY	HENRY COUNTY
HOCKING COUNTY	HOCKING COUNTY
HURON COUNTY	HURON COUNTY
JACKSON COUNTY	JACKSON COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
LIMA CITY	LIMA CITY IN
	ALLEN COUNTY
LORAIN CITY	LORAIN CITY IN
	LORAIN COUNTY
LORAIN COUNTY	LORAIN COUNTY
LUCAS COUNTY	LUCAS COUNTY
MAHONING COUNTY	MAHONING COUNTY
MANSFIELD CITY	MANSFIELD CITY IN
	RICHLAND COUNTY
MASSILLON CITY	MASSILLON CITY IN
	STARK COUNTY
MEIGS COUNTY	MEIGS COUNTY
MIDDLETOWN CITY	MIDDLETOWN CITY IN
	BUTLER COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
MORGAN COUNTY	MORGAN COUNTY
MUSKINGUM COUNTY	MUSKINGUM COUNTY
NOBLE COUNTY	NOBLE COUNTY
OTTAWA COUNTY	OTTAWA COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
RICHLAND COUNTY	RICHLAND COUNTY
ROSS COUNTY	ROSS COUNTY
SANDUSKY CITY	SANDUSKY CITY IN
	ERIE COUNTY
SCIOTO COUNTY	SCIOTO COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN
	CLARK COUNTY
TOLEDO CITY	TOLEDO CITY IN
	LUCAS COUNTY
TROTWOOD CITY	TROTWOOD CITY IN
	MONTGOMERY COUNTY
TRUMBULL COUNTY	TRUMBULL COUNTY
VINTON COUNTY	VINTON COUNTY
WARREN CITY	WARREN CITY IN
	TRUMBULL COUNTY
WILLIAMS COUNTY	WILLIAMS COUNTY
WYANDOT COUNTY	WYANDOT COUNTY
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN
	MAHONING COUNTY
ZANESVILLE CITY	ZANESVILLE CITY IN
	MUSKINGUM COUNTY
OKLAHOMA	
COAL COUNTY	COAL COUNTY
HUGHES COUNTY	HUGHES COUNTY
MC CURTAIN COUNTY	MC CURTAIN COUNTY
MUSKOGEE CITY	MUSKOGEE CITY IN
	MUSKOGEE COUNTY
SEMINOLE COUNTY	SEMINOLE COUNTY
WOODS COUNTY	WOODS COUNTY
OREGON	
ALBANY CITY	ALBANY CITY IN
	LINN COUNTY
BAKER COUNTY	BAKER COUNTY
COOS COUNTY	COOS COUNTY
CROOK COUNTY	CROOK COUNTY
CURRY COUNTY	CURRY COUNTY
DOUGLAS COUNTY	DOUGLAS COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
GRANT COUNTY	GRANT COUNTY
GRANTS PASS CITY, OR	GRANTS PASS CITY, OR IN JOSEPHINE COUNTY
HARNEY COUNTY	HARNEY COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOSEPHINE COUNTY	JOSEPHINE COUNTY
KLAMATH COUNTY	KLAMATH COUNTY
LAKE COUNTY	LAKE COUNTY
LINN COUNTY	LINN COUNTY
MALHEUR COUNTY	MALHEUR COUNTY
MORROW COUNTY	MORROW COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN LANE COUNTY
UMATILLA COUNTY	UMATILLA COUNTY
WALLOWA COUNTY	WALLOWA COUNTY
WHEELER COUNTY	WHEELER COUNTY
PENNSYLVANIA	
ALLENTOWN CITY	ALLENTOWN CITY IN LEHIGH COUNTY
CAMERON COUNTY	CAMERON COUNTY
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FOREST COUNTY	FOREST COUNTY
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY
PHILADELPHIA COUNTY	PHILADELPHIA COUNTY
POTTER COUNTY	POTTER COUNTY
READING CITY	READING CITY IN BERKS COUNTY
YORK CITY	YORK CITY IN YORK COUNTY
PUERTO RICO	
ADJUNTAS MUNICIPIO	ADJUNTAS MUNICIPIO
AGUADA MUNICIPIO	AGUADA MUNICIPIO
AGUADILLA MUNICIPIO	AGUADILLA MUNICIPIO
AGUAS BUENAS MUNICIPIO	AGUAS BUENAS MUNICIPIO
AIBONITO MUNICIPIO	AIBONITO MUNICIPIO
ANASCO MUNICIPIO	ANASCO MUNICIPIO
ARECIBO MUNICIPIO	ARECIBO MUNICIPIO
ARROYO MUNICIPIO	ARROYO MUNICIPIO
BARCELONETA MUNICIPIO	BARCELONETA MUNICIPIO
BARRANQUITAS MUNICIPIO	BARRANQUITAS MUNICIPIO
BAYAMON MUNICIPIO	BAYAMON MUNICIPIO
CABO ROJO MUNICIPIO	CABO ROJO MUNICIPIO
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO
CAMUY MUNICIPIO	CAMUY MUNICIPIO
CANOVANAS MUNICIPIO	CANOVANAS MUNICIPIO
CAROLINA MUNICIPIO	CAROLINA MUNICIPIO
CATANO MUNICIPIO	CATANO MUNICIPIO
CAYEY MUNICIPIO	CAYEY MUNICIPIO
CEIBA MUNICIPIO	CEIBA MUNICIPIO
CIALES MUNICIPIO	CIALES MUNICIPIO
CIDRA MUNICIPIO	CIDRA MUNICIPIO
COAMO MUNICIPIO	COAMO MUNICIPIO
COMERIO MUNICIPIO	COMERIO MUNICIPIO
COROZAL MUNICIPIO	COROZAL MUNICIPIO
CULEBRA MUNICIPIO	CULEBRA MUNICIPIO
DORADO MUNICIPIO	DORADO MUNICIPIO
FAJARDO MUNICIPIO	FAJARDO MUNICIPIO
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO
GUANICA MUNICIPIO	GUANICA MUNICIPIO
GUAYAMA MUNICIPIO	GUAYAMA MUNICIPIO
GUAYANILLA MUNICIPIO	GUAYANILLA MUNICIPIO
GUAYNABO MUNICIPIO	GUAYNABO MUNICIPIO
GURABO MUNICIPIO	GURABO MUNICIPIO
HATILLO MUNICIPIO	HATILLO MUNICIPIO

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
HORMIGUEROS MUNICIPIO	HORMIGUEROS MUNICIPIO
HUMACAO MUNICIPIO	HUMACAO MUNICIPIO
ISABELA MUNICIPIO	ISABELA MUNICIPIO
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO
JUANA DIAZ MUNICIPIO	JUANA DIAZ MUNICIPIO
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO
LAJAS MUNICIPIO	LAJAS MUNICIPIO
LARES MUNICIPIO	LARES MUNICIPIO
LAS MARIAS MUNICIPIO	LAS MARIAS MUNICIPIO
LAS PIEDRAS MUNICIPIO	LAS PIEDRAS MUNICIPIO
LOIZA MUNICIPIO	LOIZA MUNICIPIO
LUQUILLO MUNICIPIO	LUQUILLO MUNICIPIO
MANATI MUNICIPIO	MANATI MUNICIPIO
MARICAO MUNICIPIO	MARICAO MUNICIPIO
MAUNABO MUNICIPIO	MAUNABO MUNICIPIO
MAYAGUEZ MUNICIPIO	MAYAGUEZ MUNICIPIO
MOCA MUNICIPIO	MOCA MUNICIPIO
MOROVIS MUNICIPIO	MOROVIS MUNICIPIO
NAGUABO MUNICIPIO	NAGUABO MUNICIPIO
NARANJITO MUNICIPIO	NARANJITO MUNICIPIO
OROCOVIS MUNICIPIO	OROCOVIS MUNICIPIO
PATILLAS MUNICIPIO	PATILLAS MUNICIPIO
PENUELAS MUNICIPIO	PENUELAS MUNICIPIO
PONCE MUNICIPIO	PONCE MUNICIPIO
QUEBRADILLAS MUNICIPIO	QUEBRADILLAS MUNICIPIO
RINCON MUNICIPIO	RINCON MUNICIPIO
RIO GRANDE MUNICIPIO	RIO GRANDE MUNICIPIO
SABANA GRANDE MUNICIPIO	SABANA GRANDE MUNICIPIO
SALINAS MUNICIPIO	SALINAS MUNICIPIO
SAN GERMAN MUNICIPIO	SAN GERMAN MUNICIPIO
SAN JUAN MUNICIPIO	SAN JUAN MUNICIPIO
SAN LORENZO MUNICIPIO	SAN LORENZO MUNICIPIO
SAN SEBASTIAN MUNICIPIO	SAN SEBASTIAN MUNICIPIO
SANTA ISABEL MUNICIPIO	SANTA ISABEL MUNICIPIO
TOA ALTA MUNICIPIO	TOA ALTA MUNICIPIO
TOA BAJA MUNICIPIO	TOA BAJA MUNICIPIO
TRUJILLO ALTO MUNICIPIO	TRUJILLO ALTO MUNICIPIO
UTUADO MUNICIPIO	UTUADO MUNICIPIO
VEGA ALTA MUNICIPIO	VEGA ALTA MUNICIPIO
VEGA BAJA MUNICIPIO	VEGA BAJA MUNICIPIO
VIEQUES MUNICIPIO	VIEQUES MUNICIPIO
VILLALBA MUNICIPIO	VILLALBA MUNICIPIO
YABUCOA MUNICIPIO	YABUCOA MUNICIPIO
YAUCO MUNICIPIO	YAUCO MUNICIPIO
RHODE ISLAND	
CENTRAL FALLS CITY	CENTRAL FALLS CITY
	PROVIDENCE COUNTY
PAWTUCKET CITY	PAWTUCKET CITY
	PROVIDENCE COUNTY
PROVIDENCE CITY	PROVIDENCE CITY
SOUTH CAROLINA	
ABBEVILLE COUNTY	ABBEVILLE COUNTY
AIKEN CITY	AIKEN CITY IN
	AIKEN COUNTY
ALLENDALE COUNTY	ALLENDALE COUNTY
ANDERSON CITY	ANDERSON CITY IN
	ANDERSON COUNTY
ANDERSON COUNTY	ANDERSON COUNTY
BAMBERG COUNTY	BAMBERG COUNTY
BARNWELL COUNTY	BARNWELL COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHEROKEE COUNTY	CHEROKEE COUNTY
CHESTER COUNTY	CHESTER COUNTY
CHESTERFIELD COUNTY	CHESTERFIELD COUNTY
CLARENDON COUNTY	CLARENDON COUNTY
COLLETON COUNTY	COLLETON COUNTY
COLUMBIA CITY	COLUMBIA CITY IN

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
	RICHLAND COUNTY
DARLINGTON COUNTY	DARLINGTON COUNTY
DILLON COUNTY	DILLON COUNTY
EDGEFIELD COUNTY	EDGEFIELD COUNTY
FAIRFIELD COUNTY	FAIRFIELD COUNTY
FLORENCE CITY	FLORENCE CITY IN
	FLORENCE COUNTY
FLORENCE COUNTY	FLORENCE COUNTY
GEORGETOWN COUNTY	GEORGETOWN COUNTY
GOOSE CREEK CITY	GOOSE CREEK CITY IN
	BERKELEY COUNTY
GREENVILLE CITY	GREENVILLE CITY IN
	GREENVILLE COUNTY
GREENWOOD COUNTY	GREENWOOD COUNTY
HAMPTON COUNTY	HAMPTON COUNTY
KERSHAW COUNTY	KERSHAW COUNTY
LANCASTER COUNTY	LANCASTER COUNTY
LAURENS COUNTY	LAURENS COUNTY
LEE COUNTY	LEE COUNTY
MARION COUNTY	MARION COUNTY
MARLBORO COUNTY	MARLBORO COUNTY
MC CORMICK COUNTY	MC CORMICK COUNTY
MYRTLE BEACH CITY	MYRTLE BEACH CITY IN
	HORRY COUNTY
NEWBERRY COUNTY	NEWBERRY COUNTY
OCONEE COUNTY	OCONEE COUNTY
ORANGEBURG COUNTY	ORANGEBURG COUNTY
ROCKHILL CITY	ROCKHILL CITY IN
	YORK COUNTY
SPARTANBURG CITY	SPARTANBURG CITY IN
	SPARTANBURG COUNTY
SPARTANBURG COUNTY	SPARTANBURG COUNTY
SUMMERVILLE TOWN	SUMMERVILLE TOWN IN
	BERKELEY COUNTY
	CHARLESTON COUNTY
	DORCHESTER COUNTY
SUMTER CITY	SUMTER CITY IN
	SUMTER COUNTY
SUMTER COUNTY	SUMTER COUNTY
UNION COUNTY	UNION COUNTY
WILLIAMSBURG COUNTY	WILLIAMSBURG COUNTY
YORK COUNTY	YORK COUNTY
SOUTH DAKOTA	
BUFFALO COUNTY	BUFFALO COUNTY
DEWEY COUNTY	DEWEY COUNTY
SHANNON COUNTY	SHANNON COUNTY
ZIEBACH COUNTY	ZIEBACH COUNTY
TENNESSEE	
BENTON COUNTY	BENTON COUNTY
BLEDSOE COUNTY	BLEDSOE COUNTY
CARROLL COUNTY	CARROLL COUNTY
CLAY COUNTY	CLAY COUNTY
CLEVELAND CITY	CLEVELAND CITY IN
	BRADLEY COUNTY
COCKE COUNTY	COCKE COUNTY
COLUMBIA CITY	COLUMBIA CITY IN
	MAURY COUNTY
COOKEVILLE CITY	COOKEVILLE CITY IN
	PUTNAM COUNTY
CROCKETT COUNTY	CROCKETT COUNTY
DECATUR COUNTY	DECATUR COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FENTRESS COUNTY	FENTRESS COUNTY
GIBSON COUNTY	GIBSON COUNTY
GILES COUNTY	GILES COUNTY
GREENE COUNTY	GREENE COUNTY
GRUNDY COUNTY	GRUNDY COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
HANCOCK COUNTY	HANCOCK COUNTY
HARDEMAN COUNTY	HARDEMAN COUNTY
HAYWOOD COUNTY	HAYWOOD COUNTY
HENDERSON COUNTY	HENDERSON COUNTY
HENRY COUNTY	HENRY COUNTY
HOUSTON COUNTY	HOUSTON COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
JACKSON CITY	JACKSON CITY IN MADISON COUNTY
JACKSON COUNTY	JACKSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
KINGSPORT CITY	KINGSPORT CITY IN HAWKINS COUNTY SULLIVAN COUNTY
LAKE COUNTY	LAKE COUNTY
LAUDERDALE COUNTY	LAUDERDALE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
MACON COUNTY	MACON COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MARYVILLE CITY	BLOUNT COUNTY
MAURY COUNTY	MAURY COUNTY
MC NAIRY COUNTY	MC NAIRY COUNTY
MEIGS COUNTY	MEIGS COUNTY
MEMPHIS CITY	MEMPHIS CITY IN SHELBY COUNTY
MORGAN COUNTY	MORGAN COUNTY
MORRISTOWN CITY	MORRISTOWN CITY IN HAMBLEN COUNTY
OVERTON COUNTY	OVERTON COUNTY
PERRY COUNTY	PERRY COUNTY
PICKETT COUNTY	PICKETT COUNTY
RHEA COUNTY	RHEA COUNTY
SCOTT COUNTY	SCOTT COUNTY
STEWART COUNTY	STEWART COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WARREN COUNTY	WARREN COUNTY
WAYNE COUNTY	WAYNE COUNTY
WEAKLEY COUNTY	WEAKLEY COUNTY
WHITE COUNTY	WHITE COUNTY
TEXAS	
BAYTOWN CITY	BAYTOWN CITY IN HARRIS COUNTY
BEE COUNTY	BEE COUNTY
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY
CAMERON COUNTY	CAMERON COUNTY
CORYELL COUNTY	CORYELL COUNTY
DAWSON COUNTY	DAWSON COUNTY
DIMMIT COUNTY	DIMMIT COUNTY
EAGLE PASS CITY	EAGLE PASS CITY IN MAVERICK COUNTY
EL PASO COUNTY	EL PASO COUNTY
HIDALGO COUNTY	HIDALGO COUNTY
HOUSTON COUNTY	HOUSTON COUNTY
HUDSPETH COUNTY	HUDSPETH COUNTY
JASPER COUNTY	JASPER COUNTY
KARNES COUNTY	KARNES COUNTY
LANCASTER CITY	LANCASTER CITY IN DALLAS COUNTY
LOVING COUNTY	LOVING COUNTY
MATAGORDA COUNTY	MATAGORDA COUNTY
MAVERICK COUNTY	MAVERICK COUNTY
NEWTON COUNTY	NEWTON COUNTY
POLK COUNTY	POLK COUNTY
PORT ARTHUR CITY	PORT ARTHUR CITY IN JEFFERSON COUNTY
PRESIDIO COUNTY	PRESIDIO COUNTY
SABINE COUNTY	SABINE COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
SAN AUGUSTINE COUNTY	SAN AUGUSTINE COUNTY
SAN BENITO CITY, TX	SAN BENITO CITY, TX IN CAMERON COUNTY
SAN JUAN CITY	SAN JUAN CITY IN HIDALGO COUNTY
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY
STARR COUNTY	STARR COUNTY
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY
TYLER COUNTY	TYLER COUNTY
WESLACO CITY	WESLACO CITY IN HIDALGO COUNTY
WILLACY COUNTY	WILLACY COUNTY
ZAVALA COUNTY	ZAVALA COUNTY
VERMONT	
KILLINGTON TOWN	KILLINGTON TOWN IN RUTLAND COUNTY
VIRGINIA	
CHARLOTTE COUNTY	CHARLOTTE COUNTY
COVINGTON CITY	COVINGTON CITY IN COVINGTON CITY
DANVILLE CITY	DANVILLE CITY IN DANVILLE CITY
HALIFAX COUNTY	HALIFAX COUNTY
MARTINSVILLE CITY	MARTINSVILLE CITY IN MARTINSVILLE CITY
PETERSBURG CITY	PETERSBURG CITY IN PETERSBURG CITY
WASHINGTON	
ADAMS COUNTY	ADAMS COUNTY
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
COWLITZ COUNTY	COWLITZ COUNTY
FERRY COUNTY	FERRY COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GRANT COUNTY	GRANT COUNTY
GRAYS HARBOR COUNTY	GRAYS HARBOR COUNTY
KLICKITAT COUNTY	KLICKITAT COUNTY
LEWIS COUNTY	LEWIS COUNTY
OKANOGAN COUNTY	OKANOGAN COUNTY
PACIFIC COUNTY	PACIFIC COUNTY
PASCO CITY	PASCO CITY IN FRANKLIN COUNTY
PEND OREILLE COUNTY	PEND OREILLE COUNTY
SKAMANIA COUNTY	SKAMANIA COUNTY
STEVENS COUNTY	STEVENS COUNTY
WAHKIAKUM COUNTY	WAHKIAKUM COUNTY
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY
YAKIMA COUNTY	YAKIMA COUNTY
WEST VIRGINIA	
BROOKE COUNTY	BROOKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CLAY COUNTY	CLAY COUNTY
GREENBRIER COUNTY	GREENBRIER COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
MASON COUNTY	MASON COUNTY
MC DOWELL COUNTY	MC DOWELL COUNTY
POCAHONTAS COUNTY	POCAHONTAS COUNTY
ROANE COUNTY	ROANE COUNTY
SUMMERS COUNTY	SUMMERS COUNTY

LABOR SURPLUS AREAS—Continued

[October 1, 2008 THROUGH September 30, 2009]

ELIGIBLE LABOR SURPLUS AREAS	CIVIL JURISDICTIONS INCLUDED
TYLER COUNTY	TYLER COUNTY
WETZEL COUNTY	WETZEL COUNTY
WISCONSIN	
ADAMS COUNTY	ADAMS COUNTY
APPLETON CITY	APPLETON CITY IN
	CALUMET COUNTY
	OUTAGAMIE COUNTY
	WINNEBAGO COUNTY
BAYFIELD COUNTY	BAYFIELD COUNTY
BELOIT CITY	BELOIT CITY IN
	ROCK COUNTY
BURNETT COUNTY	BURNETT COUNTY
FLORENCE COUNTY	FLORENCE COUNTY
FOREST COUNTY	FOREST COUNTY
GREEN BAY CITY	GREEN BAY CITY IN
	BROWN COUNTY
IRON COUNTY	IRON COUNTY
KENOSHA CITY	KENOSHA CITY IN
	KENOSHA COUNTY
LANGLADE COUNTY	LANGLADE COUNTY
MANITOWOC CITY	MANITOWOC CITY IN
	MANITOWOC COUNTY
MARINETTE COUNTY	MARINETTE COUNTY
MARQUETTE COUNTY	MARQUETTE COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
MILWAUKEE CITY	MILWAUKEE CITY IN
	MILWAUKEE COUNTY
OCONTO COUNTY	OCONTO COUNTY
POLK COUNTY	POLK COUNTY
RACINE CITY	RACINE CITY IN
	RACINE COUNTY
RUSK COUNTY	RUSK COUNTY
SAWYER COUNTY	SAWYER COUNTY
VILAS COUNTY	VILAS COUNTY
WASHBURN COUNTY	WASHBURN COUNTY
WEST BEND CITY	WEST BEND CITY IN
	WASHINGTON COUNTY

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for YouthBuild Grants

Announcement Type: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 08–07.

Catalog of Federal Assistance Number: 17.274.

Key Dates: The closing date for receipt of applications under this announcement is January 15, 2009. Applications must be successfully submitted at *http://www.grants.gov* no later than 11:59:59 p.m. (Eastern Time) and then subsequently validated by Grants.gov. Application and submission information is explained in detail in Part IV of this SGA. DOL requires applicants to submit their applications electronically through Grants.gov, unless prior written approval for an exception is granted. Requests for exceptions to the electronic submission requirement is explained in detail in Part IV of this SGA. A Virtual Prospective Applicant Conference will be held for this grant competition. The date and access information for this Virtual Prospective Applicant Conference will be posted on ETA's Web site at *http://www.doleta.gov/youth%5Fservices/youthbuildgrantee.cfm*. Please be advised that the appropriation funding this competition does not allow for funds to be obligated prior to April 1, 2009.

SUMMARY: The U.S. Department of Labor (DOL or Department), Employment and Training Administration (ETA) announces the availability of approximately $47 million in grant funds for YouthBuild Grants.

YouthBuild Grants will be awarded through a competitive process. Grant funds will be used to provide disadvantaged youth with: The education and employment skills necessary to achieve economic self-sufficiency in occupations in high demand and postsecondary education and training opportunities; opportunities for meaningful work and service to their communities; and opportunities to develop employment and leadership skills and a commitment to community development among youth in low-income communities. As part of their programming, YouthBuild grantees will tap the energies and talents of disadvantaged youth to increase the supply of permanent affordable housing for homeless individuals and low-income families and to help youth develop the leadership, learning, and high-demand

occupational skills needed to succeed in today's global economy.

DOL hopes to serve approximately 2,900 youth participants during the first year of the grant, with projects operating in approximately 90–100 communities across the country. Under this announcement, DOL will be awarding grants to organizations to oversee the provision of education and employment services to disadvantaged youth in their communities. Each applicant should indicate the proposed number of participants to be served based on an average annual cost of between $15,000—$18,000.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting grantees.

ADDRESSES: DOL will accept electronic applications only, and they must be submitted through the Grants.gov portal, unless the applicant has received prior written approval for an exception from the Grant Officer, as named in this solicitation. Applicants must submit exception requests and, upon receiving an exception of the electronic submission requirements, their complete applications in paper copy to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Donna Kelly, Reference SGA/DFA PY 08–07, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the submission requirements set forth in this notice will be granted.

SUPPLEMENTARY INFORMATION:

This solicitation consists of eight parts:

- Part I provides background information on YouthBuild, a description of ETA's Youth Vision, YouthBuild program objectives, and additional information on the key components of YouthBuild to consider when preparing an application.
- Part II describes the size and nature of the anticipated awards.
- Part III describes eligibility information.
- Part IV provides information on the application and submission process.
- Part V describes the criteria against which applications will be reviewed and explains the proposal review process.
- Part VI provides award administration information.
- Part VII contains ETA agency contact information.
- Part VIII lists additional resources of interest to applicants and other information.

I. Funding Opportunity Description

YouthBuild is a youth and community development program that simultaneously addresses several core issues facing low-income communities: housing, education, employment, crime prevention, and leadership development. Part A of this section provides a background of the YouthBuild program. Part B describes the core objectives of the YouthBuild program with Part C providing additional information on key components of YouthBuild to consider when preparing a grant application.

A. Background

The YouthBuild model balances in-school learning, geared toward a high school diploma or passing the General Education Development (GED) test, and construction skills training, geared toward a career placement for the youth. The in-school component is an alternative education program that assists youth who are often significantly behind in basic skills to obtain a high school diploma or GED credential. The primary target populations for YouthBuild are high school dropouts that may also be adjudicated youth, youth aging out of foster care, and other at-risk youth populations. The YouthBuild model enables these youth to access the education they need to move on to post-secondary and high-growth, high demand jobs which will enable them to prosper in the 21st century economy. There are currently over 200 YouthBuild programs operating in the United States, funded through various funding sources.

YouthBuild was started in East Harlem, New York in 1978 to provide education services for youth and teach construction skills while renovating and building homes for low-income families. It was replicated in five locations in New York City during the 1980s. In 1993, the YouthBuild program was established by Federal statute and the U.S. Department of Housing and Urban Development (HUD) was designated as the agency responsible for administering the program.

In December 2003, the White House Task Force for Disadvantaged Youth recommended the transfer of the YouthBuild program from HUD to DOL because the program is ''at its core, an employment and training program for disadvantaged youth, and will benefit from administrative oversight in DOL within the Employment and Training Administration.''

In September 2006, the YouthBuild Transfer Act was signed by President George W. Bush. The bill repeals the YouthBuild program's statutory authority under the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 102–550; 49 U.S.C. 12899 *et seq.*) and transfers the statutory authority for the program, with needed modifications and improvements, to subtitle D of Title I of the Workforce Investment Act (WIA). The YouthBuild program is being administered as a ''national program'' by ETA.

Since its inception, a primary purpose of the YouthBuild program has been to provide job training and employment opportunities for disadvantaged youth. ETA will leverage its significant expertise and resources in the area of workforce investment under WIA to strengthen YouthBuild grantees' connections to One-Stop Career Centers and the Department's registered apprenticeship programs; leverage investments such as the President's High Growth Job Training Initiative; improve access to the post-secondary and community college system; and broker connections to the workforce system's business partners.

B. Youthbuild Program Objectives

Funds made available through the YouthBuild grants will be used to carry out a YouthBuild program with the following core objectives:

- To enable disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency in occupations in demand and post-secondary education and training opportunities;
- To provide disadvantaged youth with opportunities for meaningful work and service to their communities;
- To foster the development of employment and leadership skills and commitment to community development among youth in low-income communities; and
- To expand the supply of permanent affordable housing for homeless individuals and low-income families by utilizing the energies and talents of disadvantaged youth.

C. Key Components and Additional Information About the YouthBuild Grant Application Process

What Type of Information Should Be Addressed in the Design of the Program?

Part II of the application contains the Technical Proposal, which should address specific grant requirements identified in Section A of Part V of this

SGA. Applicants applying for these grants are asked to describe their community, the youth to be served, the need for this Federal support, and their plan for providing education, skills training, and leadership development services to youth. They must describe how their efforts contribute to the overall economic development of their community. They must also demonstrate that they have established partnerships with—or made a good faith effort to establish partnerships with—Local Workforce Investment Boards, the public school system, local community colleges, the juvenile justice system, registered apprenticeship programs, local faith-based and community organizations that serve at-risk and disadvantaged youth, and/or the local housing authority. Applicants are expected to identify their plan to leverage other Federal, State, or local funding, as well as private funding sources, to provide other ''wrap around'' supportive services as well as to support the costs associated with their defined construction project. Applicants are asked to describe their previous experience operating YouthBuild or similar youth programs with educational components. Applicants are asked to describe how occupational safety is addressed at their worksite. They are also asked to describe their organization's ability to manage this grant.

What Size Grants Are Available?

Applicants can apply for 3 year grants (2 years of program operations with a 12 month follow-up period) that will range from $700,000 to $1.1 million. These grants will be incrementally funded, with half of the grant funds awarded from fiscal year (FY) 2009 appropriations, for the first 12 months of operations. Pending satisfactory performance and availability of funds, the remaining funds would be awarded next year (FY 2010) for second year operations. These awards will support 2 years of core program operations (education, occupational skills training, and youth leadership development activities) plus an additional 12 months of follow-up support services and tracking of participant outcomes for each cohort of youth. A minimum of 5 percent of total funds should be reserved for the 12 month follow-up period.

If an Organization was Selected to Receive a New Award in FY 2008 (Awarded July 2008) or if an Organization has Remaining Funds from a Previous YouthBuild Competition Either from the Housing and Urban Development or the Department of Labor, are they Eligible to Apply in this YouthBuild Competition?

Yes; however, the prospective applicant should demonstrate how funds will be expended in the period of performance outlined in this SGA.

What Roles Might Partners Play in Partnerships?

Because disadvantaged youth possess a wide range of challenges that must be addressed through multiple strategies, prospective applicants must undertake an inventory of their communities to identify resources and services provided by faith-based and community organizations, government entities, and other youth serving organizations. The inventory will provide an opportunity for prospective applicants to do a fresh assessment of potential partners and resources that will support the YouthBuild program. Collaboration across youth serving agencies/organizations is critical to the success of any youth initiative or program. A single organization does not typically have the resources to respond to the myriad of issues that impact youth most in need. The Department understands that these inventories will vary from community to community and that, particularly for rural and Native American applicants, resources and services may be limited.

Because of the importance of collaboration and partnership, DOL is a member of the Shared Youth Vision Federal Partnership. The Federal Partnership has a mission to collaborate and coordinate across agencies in order to effectively serve the youth most in need. There are a number of States (currently over half) who have formed Shared Youth Vision State teams. Please go to the ETA's Web site for a list of State teams and more information on the Shared Youth Vision at *http://www.doleta.gov/ryf/WhiteHouseReport/VMO.cfm*.

Partnerships and partnership roles will vary depending on the applicant's strategy and participant needs. However, DOL expects that the applicant will make a good-faith effort to attract the following partners and that each collaborative partner will, at a minimum, contribute as described below.

Education and training providers (K–12, adult education, community and technical colleges, 4-year colleges and universities, and other training entities) are important foundational partners to ensure the project's activities are tied to the broader continuum of education providers in the community. Whenever possible, the YouthBuild program should strive to be connected in a meaningful way with the K–12 system for the purpose of (1) ensuring a wider variety of educational opportunities within the community as a whole and (2) as a drop-out prevention strategy. YouthBuild programs should also be connected to post-secondary training opportunities, particularly community colleges, whenever possible to ensure the smooth transition of YouthBuild participants into post-secondary training opportunities available through community colleges, including the use of articulation agreements and staff development for YouthBuild staff. Programs that offer the GED should have explicit, well-defined pathways to post-secondary educational opportunities such as community colleges, registered apprenticeship programs, and other occupational training programs.

Employers (including professional organizations and trade associations) should be actively engaged in the project and should participate fully in grant activities including: defining the program strategy and goals; identifying needed skills and competencies; designing training approaches and curricula; contributing financial support; sponsoring apprenticeship and pre-apprenticeship placements and activities; and, where appropriate, hiring qualified YouthBuild graduates.

The workforce investment system (which may include State and Local Workforce Investment Boards, State Workforce Agencies, and One-Stop Career Centers and their cooperating partners, as such terms are defined under the WIA), may play a number of roles, including: identifying and assessing potential candidates for YouthBuild; working collaboratively to leverage WIA investments through co-enrollment with the Youth Formula program; referring qualified candidates to the YouthBuild program for enrollment; providing access to ''wrap-around'' supportive services, when appropriate; providing local labor market information to YouthBuild staff and participants; and connecting qualified YouthBuild graduates to employers that have existing job openings. Examples of YouthBuild programs working with the workforce system can be found in TRAINING AND EMPLOYMENT NOTICE NO. 44–07, ''Providing Strategies to the One-Stop Career Center System on Collaborating with YouthBuild Programs'' at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2646*.

The juvenile justice system is an important partner in referring potential participants to the YouthBuild program, providing support and guidance for YouthBuild participants with court

involvement, and assisting in the reporting of recidivism rates among YouthBuild participants. Some YouthBuild participants may be placed in the program as a form of alternative sentencing or for re-entry services. In these instances, police, parole and probation, detention and juvenile correction facilities, judges, and social workers will be critically important partners for creating a safety net to prevent recidivism and ensure attachment to the community.

Faith-based and community organizations are valuable partners in the YouthBuild program. These organizations can serve as avenues of outreach to eligible youth and may provide a variety of grant services, such as case management, mentoring, and English as a Second Language (ESL) courses, and other comprehensive supportive services, when appropriate, for YouthBuild participants. Industry-related groups, such as ACE Mentoring (*http://www.acementor.org*) may also provide valuable work experience in construction and related fields in the context of a mentoring relationship.

Each collaborative partner must have a clearly defined role. These roles must be verified through a letter of commitment (not just a letter of support) submitted by each partner. The letter of commitment must detail the role the partner will play in the project, including specific responsibilities and resources committed, if appropriate. These letters must clearly indicate the partnering organization's unique contribution and commitment to the project.

In situations where these partnerships are not supported with letters of commitment, the applicants should, at a minimum, demonstrate that the potential partner was contacted and provided a sufficient opportunity for response. It is suggested that applicants use registered mail to demonstrate such efforts.

What if Two or More Organizations Submit Separate Applications To Serve the Same Urban or Rural Community?

If more than one proposal to serve the same urban or rural community is rated highly, DOL will consider whether the urban or rural community is large enough to support more than one project.

Can I Apply for Multiple Towns in One Application?

If a town is large enough to reasonably support a YouthBuild program, the grant activities should generally be focused on one town. If the applicant determines that the town is not large enough to support a YouthBuild program, it may include additional towns and provide justification for one larger service area. If multiple towns are included together in the application, applicants must limit the total requested grant amount to $1.1 million.

What Is the Definition of ''Low-Income'' Family for the Purposes of Program Eligibility?

The definition of ''low-income family'' is taken directly from the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) which states:

''The term 'low-income families' means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.''

The median for each applicant's proposed area of service can be found at HUD's Web site: *http://www.huduser.org/datasets/il.html*.

What Are Allowable Uses of Grant Funds?

Allowable uses of grant funds may include:

(1) Education and Workforce Activities, such as:

- Basic skills instruction and remedial education;
- Language instruction educational programs for individuals with limited English proficiency;
- Secondary education services and activities, including tutoring, study skills training, and dropout prevention activities, designed to lead to the attainment of a secondary school diploma, GED credential, or other State-recognized equivalent (including recognized alternative standards for individuals with disabilities);
- Counseling and assistance in obtaining post-secondary education and required financial aid;
- Alternative secondary school services;
- Work experience and skills training (coordinated, to the maximum extent feasible, with pre-apprenticeship and registered apprenticeship programs) in housing rehabilitation and construction activities;
- Occupational skills training; and
- Other paid and unpaid work experiences, including internships and job shadowing.

(2) Counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse and referral.

(3) Youth development activities, such as:

- Community service and peer-centered activities encouraging responsibility and other positive social behaviors, and
- Leadership development activities related to youth policy committees that allow YouthBuild participants to engage in local policy and decision-making related to the program.

(4) Supportive services and provision of need-based payments necessary to enable individuals to participate in the program.

(5) Supportive services to assist individuals, for a period not to exceed 12 months after the completion of training, in obtaining or retaining employment, or applying for and transitioning to post-secondary education.

(6) Supervision and training for participants in the rehabilitation or construction of housing, including residential housing for homeless individuals or low-income families, or transitional housing for homeless individuals.

(7) Supervision and training for participants in the rehabilitation or construction of community and other public facilities.

(8) Payment of a portion of the administrative costs of the grantee.

(9) Mentoring (one-on-one, group or team) of participants by adults who have been appropriately screened and matched to work with youth.

(10) Provision of wages, stipends, or other benefits and incentives to participants in the program.

(11) Ongoing training and technical assistance for staff that are related to developing and carrying out the program.

(12) Follow-up services.

(13) Equipment and/or supplies related to the YouthBuild activities funded through this grant. The Department interprets this to mean that the purchase of construction materials to be used as part of the direct training for YouthBuild participants would be an allowable use of grant funds.

Can Training Be Provided in Industries Other Than Construction?

No, DOL YouthBuild funds provided under this solicitation cannot be used to support occupational skill training other than construction. Programs may offer training in other industries however, other funding sources must be used to support these career pathways.

Will YouthBuild Projects Be Required To Follow Occupational Safety and Health Administration (OSHA) Guidelines?

Yes, YouthBuild projects will be required to follow Occupational Safety and Health Administration (OSHA) guidelines in the operation of their construction projects and to submit incident reports to DOL of injuries occurring on worksites. DOL will require that YouthBuild grantees:

- Provide comprehensive documented training on construction safety for youth working on YouthBuild projects, including requirements for youth to demonstrate knowledge and proficiency in hazard identification, abatement, and safe work practices;
- Demonstrate compliance with Federal and state child labor laws and occupational safety and health regulations;
- Provide written jobsite-specific safety plans overseen by an on-site supervisor with the knowledge, skills, and authority to correct safety and health hazards and enforce the site-specific safety plan;
- Provide necessary personal protective equipment to youth working on YouthBuild projects; and
- Report all worksite injuries and illnesses to youth working on YouthBuild projects, along with documentation on remedial measures to prevent future similar injuries and help ensure that YouthBuild is a model program that takes active steps for participant safety and health.

Can DOL Funds Be Used for Paid Work Experiences, Needs-Based Stipends, Wages, and Other Supportive Services?

Payments to participants for classroom training, paid work experiences, and occupational skill training are allowable expenses as well as for other needs-based supportive services. If the applicant plans to use grant funds for these purposes, sufficient information must be provided in the budget narrative to clearly justify the proposed amounts to be provided. Grantees are responsible for consulting with an accountant or other experts to ascertain if their payment structure complies with IRS standards.

Is the Purchase of Food an Allowable Use of Funds?

DOL considers food to be an allowable cost for YouthBuild when used as a supportive service. To qualify, the provision of food must be needs-based, and must be necessary to enable the recipients to participate in the program. The purchase of food is an unallowable cost for grant funds if expended for any reason other than needs-based supportive services. To provide food as a supportive service, grantees must create and consistently apply a written policy for determining needs-based services for participants. Grantees can provide food to enrollees as part of an on-site training class or work-site experience where access to food services and vendors is unavailable or unreliable, but you must document in your files that providing such food directly is reasonable and necessary in order to ensure continuity of training services.

Should Prospective Applicants Include Travel Costs Associated With Technical Assistance and Training in Their Budget?

Prospective applicants should include travel funds in their budget to cover travel for key staff to attend at least one national meeting per year and at least two regional trainings per year.

How Will Success Be Measured Under These Grants?

The three outcome measures are:

- Literacy and numeracy gains;
- High School diploma/GED/certification attainment rate; and
- Placement in employment/post-secondary education/occupational skills training program/military.

In addition, grantees may report on a number of interim indicators that will serve as predictors of success. Interim indicators include:

- Placement retention rate;
- Enrollment rate;
- Participation in education/training activities;
- Workforce preparation:
- Recidivism;
- Mentoring; and
- Community service/leadership activities.

In applying for these grants, applicants agree to submit updated Management Information System (MIS) data on enrollee characteristics, services provided, placements, outcomes, and follow-up status. YouthBuild grantees are required to use the ETA Web-based Case Management and Performance System which is provided to grantees at no cost.

What Is the Expected Average Annual Cost per Participant?

DOL expects the annual cost to be between $15,000 and $18,000 per participant.

When Is the YouthBuild Program Expected To Begin Enrolling Youth?

Grantees must begin program operations, including the enrollment of youth within 6 months from the date of the award, and where possible align with the local academic calendar.

Although there is no way to address every question in this solicitation, the following questions associated with allowable construction costs were frequently asked and are included for your information:

Can Funds Be Used for Rehabilitation or Construction of Buildings Other Than Low-Income Housing?

Yes. In training participants, up to 10 percent of grant funds may be used in the rehabilitation or construction of community and other public facilities. Public facilities include health care clinics, schools, and community centers. The remaining 90 percent of funds must be used to train participants in the rehabilitation or construction of low-income housing.

Would Construction of a Kitchen or Shower Facility Be an Allowable Cost to a Public Facility?

If it is a public facility that needs to have a kitchen or shower facility installed and it is done under the 10 percent limitation and it is used for training purposes, then it is allowable.

Does a Federally-Qualified Health Care Facility Qualify as an Allowable Construction Site?

The rehabilitation of a community health facility is permissible. The 10 percent limitation would apply to such costs.

Are Architectural Fees an Allowable Use of Grant Funds?

Yes, the portions of the architectural fees that are related to allowable YouthBuild training activities funded through this grant are an allowable use of funds.

Are Brokerage Fees an Allowable Use of Grant Funds?

No, brokerage fees and other fees associated with the acquisition of property are not directly related to participant training and are not an allowable use of grant funds.

Are Subcontractor Costs and Supplies, e.g. Roofing, Landscaping, etc., Allowable Uses of Grant Funds?

Non-training services and deliverables that are not directly related to participant training are not an allowable use of grant funds unless they are used in the provision of training. Property enhancements, such as landscaping, are not allowable grant costs.

Can Unallowable Costs Be Used To Fulfill the 25 Percent Match Requirement?

If the cost is not allowable to be paid with grant funds, it would also not be acceptable in fulfilling the 25 percent match requirement.

Can Funds Be Used To Purchase Land?

Grant funds may not be used to purchase land.

Can Grant Funds Be Used To Purchase a Home To Rehabilitate for the Project?

Grantees may only charge a proportion of the purchase cost, exclusive of land, which is reflective of the portion of the property that will be used for participant training.

II. Award Information

A. Award Amount

DOL intends to fund approximately 90–100 grants ranging from $700,000 to $1.1 million through this competition; however, this does not preclude DOL from funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions. Applicants are encouraged to submit budgets within this range for quality projects at whatever funding level is appropriate to their project. The average annual cost per participant should be between $15,000 and $18,000.

In the event additional funds become available, ETA reserves the right to use such funds to select additional grantees from applications submitted in response to this solicitation.

B. Period of Performance

Grants will be awarded for a 3 year period of performance. This includes 2 years of core program operations (education, occupational skills training, and youth leadership development activities) for 2 or more cohorts of youth plus an additional 12 months of follow-up support services and tracking of participant outcomes for each cohort of youth.

III. Eligibility Information and Other Grant Specifications

A. Eligible Applicants

An organization is an eligible applicant for these grants if it is a public or private non-profit agency or organization (including a consortium of such agencies or organizations with a designated lead applicant), including, but not limited to:

- Community-based organizations, including faith-based organizations;
- An entity carrying out activities under the WIA, such as a local workforce investment board or One-Stop Career Center;
- A community action agency;
- A State or local housing development agency;
- An Indian tribe or other agency primarily serving Indians;
- A community development corporation;
- A State or local youth service conservation corps; or
- Any other relevant public or private non-profit entity that provides education or employment training and can meet the required elements of the grant.

B. Eligible Enrollees

An individual may participate in a YouthBuild program only if such individual:

- Is between the ages of 16 and 24 on the date of enrollment; and
- Is a member of a disadvantaged youth population such as a member of a low-income family, and/or a youth in foster care (including youth aging out of foster care), and/or a youth offender, and/or a youth who is an individual with a disability, and/or a child of an incarcerated parent, and/or a migrant youth; and
- A school dropout.

Organizations are not required to serve the entire age group population between 16 and 24, but all participants must fall within this range.

Up to (but not more than) 25 percent of the participants in the program may be youth who do not meet the education or disadvantaged criteria above but:

- Are basic skills deficient, despite attainment of a secondary school diploma, GED credential, or other state-recognized equivalent (including recognized alternative standards for individuals with disabilities); or
- Have been referred by a local secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma.

C. Matching Funds and Leveraged Resources

Aligning resources and leveraging funding are key components of success under the YouthBuild grant program. Therefore, applicants must provide cash or in-kind resources equivalent to 25 percent of the grant award amount as matching funds. Please note that neither prior investments nor Federal resources may be counted towards the matching funds threshold. Construction materials that are acquired without grant funds and are used for approved projects as part of the training for YouthBuild participants may be used in fulfilling the 25 percent match requirement. The match may be cash or in-kind resources and must meet all the requirements in accordance with the applicable Federal cost principles.

To be allowable as part of match, a cost must be an allowable charge for Federal grant funds. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles as indicated in Part IV(E). If the cost would not be allowable as a grant-funded charge, then it also cannot be counted toward matching funds. Matching funds must be expended during the grant period of performance and must be reported quarterly on the ETA 9130 form.

Any cash or in-kind resources committed beyond the 25 percent of the grant award amount required as matching funds may be counted as leveraged funds. Please note that applicants are expected to fulfill the match amount specified on their SF–424 application and SF–424A budget form. The SF–424A form is required even though the form states that it should only be used for non-construction. Upon completion of the grant, if the match amount specified by the applicant is not met or if a portion of the matching funds are found to be an unallowable cost, the amount of DOL grant funds may be decreased on a dollar for dollar basis. This may result in the repayment of funds to DOL. Applicants who fail to provide a 25 percent match will be considered non-responsive.

Applicants are encouraged to leverage additional funds outside of the match to supplement the project as a whole. Matching funds and leveraged resources could come from a variety of sources including: public sector (e.g., State or local governments); non-profit sector (e.g., community organizations, faith-based organizations, or education and training institutions); private sector (e.g., businesses or industry associations); investor community (e.g., angel networks or economic development entities); and the philanthropic community (e.g., foundations).

Applicants should clearly make the distinction of what will be considered matching funds versus ''additional'' leveraged funds. In addition to the Federal amount you are requesting, the matching funds shall be shown on the SF–424 and SF–424A. Do not include the leveraged funds on the SF 424 or SF 424A. The amount of funds specified on these forms will be considered by DOL as the applicant's match. Leveraged resources should be explained in the budget narrative separate from the explanation of match. Applications will

be evaluated on how the match and leveraged funds are fully integrated in support of program outcomes. Grantees must track and report both match and other non-Federal leveraged resources quarterly on Form ETA 9130. Instructions and the form may be found at *http://www.doleta.gov/sga/pdf/9130_Basic_JUL08.pdf*.

IV. Application and Submission Information

A. Address To Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal will consist of three separate and distinct parts—a cost proposal (I), a technical proposal (II), and a description of and information on the work site (III). Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part I. The Cost Proposal. The Cost Proposal must include the following four items:

• The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the authorized representative of the applicant.

• All applicants for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402, Jun. 27, 2003. Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this website: *www.dunandbradstreet.com* or call 1–866–705–5711.

• The SF 424A Budget Information Form (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request.

• A Budget Narrative: The budget narrative should break down the budget, match and leveraged resources by project activity, should discuss cost-per-participant, and should discuss precisely how the administrative costs support the project goals. If the applicant plans to use grant funds for paid work experiences, needs-based payments, and other supportive services for the participants, sufficient information must be provided in the budget narrative to clearly justify the proposed amounts to be provided. All 3 years of proposed funding should be included on the SF 424A.

Please note that applicants that fail to provide a SF 424, SF 424A, a Dun and Bradstreet number, and a budget narrative will be removed from consideration prior to the technical review process. Only an applicant's match amount (not other leveraged resources) should be listed on the SF 424 (Block 18) and SF 424A Budget Information Form (Section A & C). The amount of Federal funding requested for the entire period of performance (i.e. 3 years) should be shown together on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Part II. The Technical Proposal. The Technical Proposal will demonstrate the applicant's capability to implement the YouthBuild grant project in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Part V Section A of this SGA. The Technical Proposal is limited to 20 double-spaced single-sided pages with 12 point text font and 1 inch margins. Any materials beyond the 20-page limit will not be read. Applicants should number the Technical Proposal beginning with page number 1.

In addition to the 20-page Technical Proposal, the applicant must provide an organization chart that reflects how the YouthBuild program will be staffed. In instances where the YouthBuild program is part of a larger organization (e.g., a Housing Authority), please include a diagram that indicates where the YouthBuild program fits within the larger organization. Also, the applicant must provide a timeline outlining project activities; letters of commitment from partners; and a two-page Abstract summarizing the proposed project including applicant name, project title, a description of the area to be served, and the funding level requested. The Abstract must note whether the application is being submitted as an urban, rural, or Native American application. No support letters are permitted. Commitment letters must accompany the application electronically. Please note that applicants should not send letters of commitment separately to ETA because letters are tracked through a different system and will not be attached to the application for review. These additional materials (organizational chart, timeline, commitment letters, and two-page abstract) do not count against the 20-page limit for the Technical Proposal, but may not exceed twenty (20) pages. Any additional materials (organizational chart, timeline, commitment letters, and two-page abstract) beyond the 20-page limit will not be read.

Part III. The Work Site Description. The application must submit the Work Site Description Form (ETA–9143) including all requested attachments, which describes the planned work site that will be used for on-site construction training for youth participants. These forms can be found at *http://www.doleta.gov/youth%5Fservices/youthbuildgrantee.cfm.* Information on property for use in year two will be requested prior to receipt of 2nd year funding.

Section 10 of ETA 9143 requests information from the property owner or property management company or companies allowing access to the housing site(s) for on-site construction training. DOL will deem non-responsive any application that fails to specifically identify the location of the on-site construction, including evidence of site access. Guidance on evidence of site access is as follows:

• If the applicant has a contract or option to purchase the property, include a copy of the contract or option; or

• If a third party owns the property or has a contract or option to purchase, that third party must provide a letter stating the nature of the ownership and specifically providing access to the property for the purposes of the program and the time frame in which the property will be available. In the case of a contract or option, include a copy of the document.

C. Submission Process, Date, Times, and Addresses

The closing date for receipt of applications under this announcement is January 15, 2009.

1. Electronic Submission. DOL requires applicants to submit their applications electronically through Grants.gov, unless prior written approval for an exception is granted (see #2 below for more information).

Applications must be successfully submitted at *http://www.grants.gov* no later than 11:59:59 p.m. (Eastern Time) on January 15, 2009, and then subsequently validated by Grants.gov. The Grants.gov helpdesk is available from 7 a.m. (Eastern Time) until 9 p.m. (Eastern Time). Applicants should factor the unavailability of the Grants.gov helpdesk after 9 p.m. (Eastern Time) into plans for submitting an application. The submission and validation process is described in more detail below. The process can be complicated and time-consuming. Applicants are strongly advised to initiate the process as soon as possible and to plan for time to resolve technical problems if necessary.

It is strongly recommended that before the applicant begins to write the proposal, applicants should immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp*. These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic submission in order to avoid unexpected delays that could result in the rejection of an application. It is highly recommended that applicants use the ''Organization Registration Checklist'' at *http://www.grants.gov/assets/Organization_Steps_Complete_Registration.pdf* to ensure the registration process is complete.

Within two business days of application submission, Grants.gov will send the applicant two e-mail messages to provide the status of application progress through the system. The first e-mail, almost immediate, will confirm receipt of the application by Grants.gov. The second e-mail will indicate the application has either been successfully validated or has been rejected due to errors. Only applications that have been successfully submitted and successfully validated will be considered. It is the sole responsibility of the applicant to ensure a timely submission, therefore sufficient time should be allotted for submission (two business days), and if applicable, subsequent time to address errors and receive validation upon resubmission (an additional two business days for each ensuing submission). It is important to note that if sufficient time is not allotted and a rejection notice is received after the due date and time, the application will not be considered.

The components of the application must be saved as either .doc, .xls or .pdf files. Documents received in a format other than .doc, .xls or .pdf will not be read.

Applicants are strongly advised to utilize the plethora of tools and documents, including FAQs, that are available on the ''Applicant Resources'' page at *http://www.grants.gov/applicants/app_help_reso.jsp#faqs*. To receive updated information about critical issues, new tips for users and other time sensitive updates as information is available, applicants may subscribe to ''Grants.gov Updates'' at *http://www.grants.gov/applicants/email_subscription_signup.jsp*.

If applicants encounter a problem with Grants.gov and do not find an answer in any of the other resources, call 1–800–518–4726 to speak to a Customer Support Representative or e-mail ''*support@grants.gov*''.

2. Exceptions to the Electronic Submission Requirement. DOL will accept electronic applications only, and they must be submitted through the Grants.gov portal, unless the applicant has received prior written approval for an exception from the Grant Officer, as named in this solicitation. An exception request must be in writing and state the basis for the request and explain why electronic submission is not possible. Exception requests must be sent to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Donna Kelly, Reference SGA/DFA PY 08–07, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. The basis for exceptions may include, but are not limited to (a) lack of available Internet access in the geographic location in which the applicant's business office is located or (b) physical disability of the applicant that prevents the applicant from accessing or responding to the application electronically. The exception request should also include an email address, if available, or a name and mailing address where responses can be directed. Exception requests will be accepted beginning on the date of publication of this solicitation and must be received no later than December 16, 2008. DOL will not consider an exception request that does not conform to the above requirement (see #3 below for the limited circumstances in which we will consider a request that arrives after that date). DOL will acknowledge receipt of the exception request by e-mail, if an e-mail address is provided, or by other available means. DOL will not make determinations or respond to exception requests via the telephone, and will not accept exception requests by email. Each exception request will be reviewed and a determination made. DOL will inform the applicant, whether or not the exception has been granted. In the event an exception is granted, the submission date for mailed applications will be the same as the electronic application submission receipt date. Applicants receiving an exception must follow the submission instructions as follows.

Submission Instructions for Applicants Receiving an Exception of Electronic Submission. Applicants receiving an exception of the electronic submission requirements must submit their complete applications in paper copy as follows:

(a) Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Donna Kelly, Reference SGA/DFA PY 08–07, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered and overnight delivery proposals will be received at the above address.

(b) Applicants submitting proposals in hard-copy must submit an original signed application (including the SF 424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM. Please reference SGA/DFA PY 08–07 on the submittal envelope.

(c) Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted. Any paper applications received without prior written approval for exception to the requirements of electronic submission will not be considered.

3. Late Applications. For applications submitted on Grants.gov, only applications that have been successfully submitted no later 11:59:59 p.m. (Eastern Time) on the closing date and successfully validated will be considered. For applicants receiving an exception of the electronic submission requirement, any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) was sent by U.S. Postal Service registered or certified mail not later than

the fifth calendar day before the date specified for receipt of applications (e.g., an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by professional overnight delivery service to the addressee not later than one working day prior to the date specified for receipt of applications. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

E. Cost Principles

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.,* Non-Profit Organizations—OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance. Direct Federal grants, sub-awards, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services supported with DOL financial assistance under this program. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the Workforce Investment Act of 1998 and DOL regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. See 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972 and the Religious Freedom Restoration Act of 1993), national origin, age, disability, or political affiliation or belief.'' Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against supporting inherently religious activities with direct DOL financial assistance, can be found at 29 CFR Part 2, Subpart D. Provisions relating to the use of indirect support (such as vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266.

A faith-based organization receiving federal financial assistance retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services supported with Federal financial assistance without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal financial assistance retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of DOL funded activities.

The Department notes that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of the Workforce Investment Act and maintain that hiring practice even though Section 188 of the Workforce Investment Act contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

Faith-based and community organizations may reference ''Transforming Partnerships: How to Apply the U.S. Department of Labor's Equal Treatment and Religion-Related Regulations to Public-Private Partnerships'' at: *http://www.workforce3one.org/public/_shared/detail.cfm?id=5566&simple=false*.

Indirect Costs. As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after the grant award. If an applicant already has a Federal Indirect Cost Rate Agreement, that agreement may be used.

Administrative Costs. Under the YouthBuild grants, an entity that receives a grant to carry out a project or program may not use more than 15 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement from its Federal Cognizant Agency as specified above.

Intellectual Property Rights. The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: i) the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically

or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

Salary and Bonus Limitations. In compliance with Public Law 109–234 and Public Law 110–5, none of the funds appropriated in Public Law 109–149, Public Law 110–5, or prior Acts under the heading 'Employment and Training' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A–133. See Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262*.

F. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate proposals for a YouthBuild Grant. These criteria and point values are:

Criterion	Points
1. Statement of Need	5
2. Program Management and Organizational Capacity	15
3. Project Design, Service Strategy, and Program Outcomes	35
4. Linkages to Key Partners and Leveraged Resources	25
5. Evidence of Past and Projected Success in YouthBuild or Other Relevant Programs	20
Total Possible Points	100

1. Statement of Need (5 points)

Please describe the community where the YouthBuild program will operate. Identify the need for a YouthBuild program in the community that is proposed to be served through the grant and demonstrate the need for the project in that area. Applicants are expected to present information on various characteristics of the community(ies) in which they expect to operate. If there are particular neighborhoods within the city where the grant will be focused, describe these neighborhoods and provide available data specific to those areas. Required information includes the population of the area, its poverty rate, the incidence of homelessness, shortage of affordable housing, its unemployment rate, the graduation rate, and the number of 18–24 year olds without a high school diploma.

To obtain these indicators, applicants can use census tract data from the 2000 census—go to *http://factfinder.census.gov* and use the link on the left for People. Graduation rates for every school district in the nation may be found at *http://www.edweek.org/apps/maps/*.

All of these indicators should be presented in chart form and the applicant must provide the sources for the data provided. In addition, applicants should provide information on the economic and employment factors facing the community; including negative factors as well as promising economic and employment trends that will require an educated and skilled workforce.

If the organization plans to build or rehabilitate houses or community/public facilities in a different community from that in which youth will be recruited, present the homelessness and poverty data for that area and the unemployment, poverty, and graduation rates for the area in which the organization will be recruiting youth participants.

Applicants will be evaluated on:

- The clear and specific need for a YouthBuild program in their community;
- The graduation rate and the impact that it has on economic development and burdens on public systems; and
- The degree to which other factors in distressed communities are negatively impacting youth and their families such as poverty rate, unemployment rate, etc. particularly in comparison with other areas of the city.

2. Program Management and Organizational Capacity (15 points)

Please provide a description of the applicant organization and a statement of its qualifications for running a YouthBuild program including years of operation, current annual budget, experience of staff and continuity of leadership and their relevant experience. Please fully describe the organization's capacity to track and report outcomes. Please discuss the professional development activities available to staff, either on-site or through training funds.

Please fully describe any previous experience of the organization in operating grants from either Federal or non-Federal sources. Describe the fiscal controls in place in the organization for auditing and accountability procedures. Grantee must also provide information on the overall financial stability of the organization that has financial oversight for this program.

Please describe the organization's ability to handle multiple funding streams with appropriate accounting systems in place. The applicant should demonstrate how funds will be expended in the period of performance outlined in this SGA.

Applicants must describe their proposed project management structure including, where appropriate, the identification of a proposed project manager, discussion of the proposed staffing pattern, and the qualifications and experience of key staff members or short job descriptions.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

- The overall financial stability of the organization as demonstrated by strong accounting systems, fiscal controls, and previous grants management.
- The capacity of the applicant organization to accomplish the goals and outcomes of the project, including the ability to collect and manage data in a way that allows consistent, accurate, and expedient reporting.
- The time commitment of the proposed staff dedicated to the YouthBuild program is sufficient to ensure proper direction, management, and timely completion of the project.
- The roles and contribution of staff, consultants, and collaborative organizations are clearly defined and linked to specific objects and tasks.
- The background, experience, and other qualifications of the staff are sufficient to carry out their designated roles.
- The organization is able to begin program operations, including the enrollment of youth, within 6 months from the date of the award, and where possible align with the local academic calendar.

In addition, programs with funds remaining from either HUD or DOL YouthBuild awards must demonstrate how additional funds will be integrated into the existing program, how these funds will be used to serve additional youth, and how the additional funds will be expended in the period of performance outlined in the SGA.

3. Project Design, Service Strategy, and Program Outcomes (35 points total)

a. How will youth be recruited and selected for the program? (5 points)

Please provide a description that fully demonstrates how eligible youth will be recruited and selected as participants, including a description of arrangements that will be made with Local Workforce Investment Boards, One-Stop Career Centers, faith-based and community organizations, State educational agencies or local educational agencies (including agencies of Indian tribes), public assistance agencies, the courts of jurisdiction, agencies operating shelters for homeless individuals and other agencies that serve youth who are homeless individuals, foster care agencies, and other appropriate public and private agencies. Please provide a description that fully demonstrates the outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children) as participants.

Applicants will be evaluated on:

- The quality and comprehensiveness of their recruitment strategy including methods for outreach, referral, and selection.
- The program's efforts to recruit eligible young women into the YouthBuild program.

b. How will education and occupational skills training be delivered to youth? (15 points)

Please provide a description that fully demonstrates the educational and job training activities, work opportunities, post-secondary education and training opportunities, and other services that will be provided to participants, and how those activities, opportunities, and services will prepare youth for employment in occupations in demand in the local labor market. Given the connection between education and earnings, it is DOL's expectation that the academic component will be rigorous and challenging and will provide youth with opportunities to transition to post-secondary training. The program should be structured so that participants in the program are offered education and related services designed to meet educational needs for at least 50 percent of the time during which they participate in the program. YouthBuild program participants must be offered work and skill development activities for at least 40 percent of the time during which they participate in the program.

As described below, the proposal will be rated on the quality of the education program, the quality of the occupational skills training, and the integration of these two components as well as other criteria listed in (1) and (2) below.

(1) Education

Please indicate the type of academic credential that participants earn while in the program (GED or high school diploma). Please fully describe the quality of the academic program and the qualifications of the teaching staff. Fully describe any innovative and successful strategies that the program or initiative has used to address low basic skills of participants. Please describe if and how the academic portion of your program differs from that of a traditional comprehensive high school. If distance learning and/or credit retrieval is used, please fully describe how this is incorporated into the overall academic program. Please describe how student mastery is demonstrated. Please fully describe the relationship between the program and the local school district(s).

Please fully demonstrate how the academic program is integrated with the occupational skills training component of the program. Please explain how academic and occupational skills training instructors work together to reinforce and complement classroom and workplace lessons. Please describe other innovative teaching strategies used in the program.

Please explain how the program explicitly links participants to local community colleges and trade schools, particularly for YouthBuild programs that only offer GEDs to participants.

Please describe the types of college exploration, planning, preparation, and assistance that will be provided. Describe the types of follow-up services that will be provided to support youth as they transition to post-secondary education and ensure that they graduate.

Applicants will be evaluated on:

- The use of innovative and evidence-based instructional strategies to address basic skill deficiencies;
- The extent to which a challenging curriculum is provided;
- The extent to which project-based learning is used;
- The degree to which the occupational skill training provided by the program is reinforced in the academic portion of the program;
- The explicit links for participants to local community colleges and trade schools; and
- The degree to which career and college exploration are incorporated into the overall culture of the program.

(2) Occupational Skills Training

Please discuss the occupational skills training component of the program including where and how the training will be conducted, how the curriculum is developed, the type of industry-recognized credentials that result from the training, and the involvement of industry partners in the development of the training. Describe how the applied learning of the construction trades will improve and enhance the academic outcomes for the youth. Please describe the skills and qualifications of the occupational skills training instructors.

Please provide a description of the payment structure for participants. Provide labor market information for the community, State, and/or region where the YouthBuild program will be implemented, including both current data (as of the date of submission of the application) and projections on career opportunities in growing industries. Please explain how the YouthBuild program will prepare youth for employment in high-growth industries as defined by the local labor market.

Please describe how the organization will oversee the worksite to identify existing and potential hazards, how youth will be trained to protect themselves from potential worksite accidents, and how hazards will be prevented and controlled through policies and procedures. Provide information on how worksite supervisors will be trained to ensure OSHA-approved worksite safety. Please indicate the ratio of adults to youth at construction training sites.

This section of the application will be evaluated on the following criteria:

- The degree to which occupational skills training is integrated with the academic component of the program;
- The availability of industry-recognized credentials upon completion of the occupational skills training components of the program;
- The strength of connections to business partners and apprenticeship programs;
- The duration of the occupational skills training component is aligned with the legislative rule of being at least 40 percent of a participant's time in the program;
- The comprehensiveness of safety plans for the occupational skills training worksite including the training of staff and participants in OSHA guidelines.

c. How will community service learning and leadership development opportunities be provided for youth in the program? (5 points)

Please fully describe the proposed leadership curriculum, qualifications of instructors, and the impact of the proposed leadership activities on the target area. The application must fully describe the leadership development training that will be offered to participants, the expected leadership competencies with which participants will graduate, youth committee involvement strategies, efforts for providing the training to build group cohesion and peer support, and opportunities for continued leadership after graduation. Please describe how community service learning opportunities will be implemented at the site.

Applicants will be evaluated on:

- The quality of leadership development and community service learning activities and
- How these activities are integrated with academic, skills training, and career exploration components of the program.

d. What types of post-program transition services will be provided? What types of follow-up services will be provided? Post-program transition services are defined as services offered during program enrollment that will assist a young person in making a successful transition from the YouthBuild program into employment and/or post-secondary education and training programs. Follow-up services are services provided to a YouthBuild program participant upon exit from the program. (10 points)

Please fully describe the types of post-program transition services that will be offered to prepare youth for career pathway opportunities and placements and/or educational opportunities and placements. Please fully describe how each individual's work readiness will be assessed and how work readiness training will be provided. Also describe how an individual's readiness for placement in post-secondary education and/or apprenticeship programs will be assessed. Please fully demonstrate the types of career exploration and planning activities that will be offered by the program, particularly for high-growth, high-demand, and high-wage occupations. For a list of the U.S. Department of Labor's Employment and Training Administration's Targeted High-Growth Industries, go to: *http://www.doleta.gov/BRG/eta_default.cfm*.

Please fully describe the program's job placement and retention strategy including how the program will work with employers and/or One-Stop Career Centers to identify and create job openings for the young people served by the program.

Please fully describe the types of follow-up that will be provided to program graduates. These supportive services should relate to employment placement and retention, post-secondary transition and degree attainment. Describe how appropriate continued support services will be provided.

Important elements for evaluation include:

- The degree to which work readiness and career exploration are integrated into the culture, core mission and activities of the program;
- The program's integrated approach to providing post-program planning for participants; and
- The structure of its participant follow-up service strategy.

4. Linkages to Key Partners, Match and Leveraged Resources (25 points total)

a. Who are the key partners that will be supporting the program? (15 points)

Please describe the key partners who will be involved in the proposed YouthBuild project. Specifically, describe in detail the activities to be undertaken by partners, the level of commitment from each partnering organization, and their qualifications to assist with this project. As an attachment, the applicant should include letters of commitment from key partners that demonstrate the strength and maturity of the partnership including previous collaboration on projects. Where they exist, partnerships should include existing statewide collaborations such as Shared Youth Vision state teams and Governor's Children's Cabinets. Prospective applicants should also have thorough knowledge of and, where possible, engage with DOL discretionary projects in their area to determine if collaborations can be created between YouthBuild and other DOL investments, particularly where those investments target at-risk youth and/or the training and employment opportunities relating to the construction industry. These investments include Workforce Innovation in Regional Economic Development (WIRED)—*http://www.doleta.gov/wired/*, the President's High Growth Job Training Inititiative (HGJTI)—*http://www.doleta.gov/BRG/JobTrainInitiative/*, and the President's Community-Based Job Training Grants (CBJTG)—*http://www.doleta.gov/business/Community-BasedJobTrainingGrants.cfm*.

Please describe how the applicant conducted its inventory of community assets of youth-serving organizations. Such an inventory should include faith-based and community organizations and government entities that will be integrated into the network of organizations providing referrals to, supportive services or leveraged resources for youth participating in the proposed program. The Department understands that these inventories will vary from community to community and that, particularly for rural and Native American applicants, resources and services may be limited. The thoroughness of the applicant's process for inventorying available resources in the community will be considered as part of the evaluation of the application.

Please provide a description of how the proposed program will coordinate with Federal, State, and local agencies and Indian tribes to access services, including local workforce investment activities, vocational education programs, limited English proficiency instruction programs, and activities conducted by public schools, community colleges, and national service programs, as well as other job training provided with funds available under this title.

Please describe the partnerships with the juvenile justice system or housing and community development systems. Please fully describe the specific role of employers in the proposed program, such as their role in developing the proposed program and assisting in service provision and in placement activities. Please fully describe the program's relationship with local building trade unions and their role in training, the relationship of the proposed program to established registered apprenticeship programs and employers, and the ability of the applicant to grant industry-recognized skills certifications through the program.

Points for this factor will be awarded based on:

- The comprehensiveness of the partnership and the degree to which each key partner plays a committed role in the proposed project;
- The partners knowledge and experience concerning the proposed grant activities, and their ability to impact the success of the project;
- Evidence, including letters of commitment, that key partners have expressed a clear dedication to the project and understand their areas of responsibility; and
- Evidence of a plan for interaction and communication between partners and the demonstrated ability of the lead

agency to successfully manage partnerships.

• A description of the inventory process undertaken to identify partners and resources to support the program. The thoroughness of the process for identifying resources within the applicant's community, not the quantity of the resources, will be evaluated.

b. What match and other leveraged resources are being contributed to this project? (10 points)

Applicants should clearly describe the required matching funds and any additional funds or resources leveraged in support of the proposed strategies and demonstrate how these funds contribute to the goals of the project. Important elements of the explanation include:

• Which partners and/or grant sub-recipients have contributed match and leveraged resources and the extent of each contribution, including an itemized description of each contribution;

• The quality of the match and leveraged resources, including the extent to which each contribution will be used to further the goals of the project; and

• Evidence, such as letters of commitment, that key partners have expressed a clear commitment to provide the contribution.

Assessment of this criterion will be based on the extent to which the application fully describes the amount, commitment, nature, and quality of match and leveraged resources. A match in the sum of 25 percent of the Federal funding request must be provided. Matching funds may be either cash or in-kind. Both matching funds and additional leveraged resources will be scored based on the degree to which the source and use of those resources are clearly explained and the extent to which all resources are fully integrated into the project to support grant outcomes.

5. Evidence of Past and Projected Success in Youthbuild or Other Relevant Programs (20 points)

Please fully describe and document past accomplishments operating a YouthBuild program or similar youth programs that combine academic and occupational skills training. Please explain how long the program has been in operation and provide annual performance data in a chart on the following factors:

• Length of program operation;
• Number of youth recruited;
• Number of youth enrolled;
• Number of youth completing the program;
• Number and percent of youth receiving their GED and/or high school diploma (please differentiate between the two);
• Rate of literacy and numeracy gains by participants;
• Number and percent of youth who have entered construction-related employment;
• Number and percent of youth who have entered other employment;
• Employment retention rates;
• Number and percent of youth who have entered post-secondary training or education;
• Post-secondary training or education retention rates; where available, please indicate the number of participants who have completed post-secondary training or education and have achieved a credential;
• Number and percent of youth who have entered registered apprenticeship programs; and
• Annual cost per participant.

Please indicate the projected enrollment per year and the expected performance outcomes if awarded a grant (in terms of literacy and numeracy gains; high school diploma/GED attainment; placement in employment, post-secondary education, occupational skills training, or the military; and employment retention rate). Please fully describe how both the academic and skills training curricula were developed and how long they have been used. Please note that performance outcomes described in this section are not binding. At the time of grant award, DOL will inform grantees of expected outcomes based on existing outcome data for this type of program. DOL reserves the right to set expected performance outcomes at a later date in the awards selection process.

Please indicate the types of private foundation funding the organization has secured in the past. Also, fully describe long-term partnerships with organizations that have added to the robustness of the program and how the organization has sustained these partnerships.

Important elements to be considered with this factor are:

• The degree to which the performance data is provided and documented;
• The variety and types of funding streams and long-term partnerships that the program has been able to attract to support YouthBuild activities;
• The complexity of construction activities undertaken and the degree to which youth are exposed and trained in a variety of construction skills;
• The use of occupational skills training curriculum that results in an industry-recognized credential; i.e., the National Center for Construction Education and Research (NCCER) or the Home Builder's Institute's (HBI) HPACT curriculum; and
• The use of a State approved curricula for either GED or high school diploma.

B. Review and Selection Process

Proposals that are timely and responsive to the requirements of this SGA will be rated against the criteria listed above by an independent panel comprised of representatives from DOL, HUD, U.S. Department of Justice, and U.S. Department of Health and Human Services and other peers. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance; whether the areas to be served have previously received grants for YouthBuild programs; the availability of funds; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. The Government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant (including electronic signature via E-Authentication on *http://www.grants.gov*).

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution. Applicants not selected for award will be notified by mail.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions:

a. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

b. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

d. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

e. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

f. 29 CFR Part 2, subpart D-Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

g. 29 CFR Part 31–Nondiscrimination in Federally Assisted Programs of the Department of Labor-Effectuation of Title VI of the Civil Rights Act of 1964.

h. 29 CFR Part 32–Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

i. 29 CFR Part 33–Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

j. 29 CFR Part 35–Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

k. 29 CFR Part 36–Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

The following administrative standards and provisions may be applicable:

a. Workforce Investment Act—20 Code of Federal Regulations (CFR) Part 667 (General Fiscal and Administrative Rules).

b. 29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training; and

c. 29 CFR Part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998.

In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c) (4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

Further, as a Federal agency, DOL has a statutory duty to affirmatively further fair housing. DOL requires the same of its funding recipients under this solicitation. If the organization is a successful applicant, the organization will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status. Therefore, the application should include specific steps to:

- Overcome the effects of impediments to fair housing choice that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;
- Remedy discrimination in housing; or
- Promote fair housing rights and fair housing choice.

Further, the applicant has a duty to carry out the specific activities provided in its responses to this solicitation that address affirmatively furthering fair housing.

C. Special Program Requirements

Evaluation. DOL may require that the program or project participate in an evaluation of overall performance of YouthBuild grants. To measure the impact of the YouthBuild programs, DOL may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make and retain records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of DOL, including after the expiration date of the grant.

D. Reporting

Quarterly financial reports, quarterly progress reports, and MIS data will be submitted by the grantee electronically. The grantee is required to provide the reports and documents listed below:

- Quarterly Financial Reports. A Quarterly Financial Status Report (ETA 9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use DOL's On-Line Electronic Reporting System and information and instructions will be provided to grantees.
- Quarterly Narrative Progress Reports. The grantee must submit a quarterly progress report to their designated Federal Project Officer within 45 days after the end of each quarter. This report should provide a detailed account of activities undertaken during that quarter. Grantees must agree to meet DOL reporting requirements. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.

2. Progress toward performance outcomes, including updates on product, curricula, and training development.

- Quarterly Performance Reports. Organizations will be required to submit updated data on enrollment, services provided, placements, outcomes, and follow-up status within 45 days after the end of each quarter. A government-procured, Web-based Case Management and Performance system will be provided at no charge to all grantees. Grantees will be required to have industry-standard computer hardware and high-speed Internet access in order to use the MIS system. Grant funds may be used with the prior approval of the Grant Officer to upgrade computer hardware and Internet access to enable projects to use the MIS system.
- Injury Incident Reports. Organizations will be required to submit incident reports of injuries received by enrollees during the training program. DOL will provide specifications for this reporting after grant award.
- Final Report. A final report must be submitted no later than 90 days after the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document capacity building and training approaches. The final report should also include copies of all deliverables, e.g. curricula and competency models. Three copies of the final report must be submitted to ETA, and grantees must agree to use a designated format specified by DOL for preparing the final report.
- A Closeout Financial Status Report is due 90 days after the of the grant period.

• Record Retention. Applicants should be aware of Federal guidelines on record retention, which require grantees to maintain all records pertaining to grant activities for a period of not less than three years from the time of final grant close-out.

VII. Agency Contacts

For further information regarding this SGA, please contact Donna Kelly, Grant Officer, Division of Federal Assistance, at (202) 693–3934 (please note this is not a toll-free number). Applicants should fax all technical questions to (202) 693–2705 and must specifically address the fax to the attention of Donna Kelly and should include SGA/DFA PY 08–07, a contact name, fax and phone number, and email address. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm*, at *http://www.grants.gov*, and in the **Federal Register**.

VIII. Additional Resources of Interest to Applicants and Other Information

Resources for the Applicant

DOL maintains a number of web-based resources that may be of assistance to applicants:

• The Web site for the ETA (*http://www.doleta.gov*) is a valuable source for background information on the President's High Growth Job Training Initiative.

• The Workforce [3] One Web site (*http://www.workforce3one.org*) is a valuable resource for information about demand driven projects of the workforce investment system, educators, employers, and economic development representatives.

• America's Service Locator (*http://www.servicelocator.org*) provides a directory of the nation's One-Stop Career Centers.

• Career Voyages (*http://www.careervoyages.gov*), a Web site targeted at youth, parents, counselors, and career changers, provides information about career opportunities in high-growth/high-demand industries.

• Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' (*http://www.doleta.gov*).

• For an understanding of the Department's Equal Treatment and Religion-Related regulations and the responsibilities of receiving Federal grant support, please see ''Transforming Partnerships: How to Apply the U.S. Department of Labor's Equal Treatment and Religion-Related Regulations to Public-Private Partnerships'' at: *http://www.workforce3one.org/public/_shared/detail.cfm?id=5566&simple=false*.

• TRAINING AND EMPLOYMENT NOTICE NO. 44–07 ''Providing Strategies to the One-Stop Career Center System on Collaborating with YouthBuild Programs'' can be found at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2646*.

• Information on the Shared Youth Vision can be found at *http://www.doleta.gov/ryf/WhiteHouseReport/VMO.cfm*.

IX. Other Information

OMB Control Number 1225–0086.

Expires September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. PLEASE DO NOT RETURN THE COMPLETED APPLICATION TO THE OMB. SEND IT TO THE SPONSORING AGENCY AS SPECIFIED IN THIS SOLICITATION.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC, this 30th day of September 2008.

Donna Kelly,

Employment and Training Administration, Grant Officer.

[FR Doc. E8–23684 Filed 10–6–08; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Employment of Apprentices, Messengers and Learners (Including Student-Learners and Student-Workers), Forms WH–205 and WH–209. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 8, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* Fair Labor Standards Act (FLSA) section 14(a) requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide by regulations or orders for the employment of categories of workers who, under special certificates, may be paid less than the generally applicable minimum wage set by section 6(a)(1) of the FLSA. 29 U.S.C. 206(a), 214(a); see also 29 CFR 520.200. This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion, and length of service. 29 U.S.C. 214(a). These workers

include apprentices, messengers, and learners (including student-learners and student-workers). 29 CFR 520.200. Regulations found at 29 CFR Part 520 contain the provisions that implement the section 14(a) requirements. Form WH–205 is the application an employer uses to obtain a certificate to employ student-learners at wages lower than the general federal minimum wage. Form WH–209 is the application an employer uses to request a certificate authorizing the employer to employ learners and/or messengers at subminimum wage rates. There is no application form that employers complete to obtain authority from DOL to employ apprentices at subminimum wages. This information collection is currently approved for use through April 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility under the special minimum wage program.

Type of Review: Extension.

AGENCY: Employment Standards Administration.

Title: Employment of Apprentices, Messengers, and Learners (Including Student-Learners and Student-Workers).

OMB Number: 1215–0192.

Agency Number: WH–205 and WH–209.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Total Respondents: 700.

Total Annual Responses: 700.

Type of Response: Recordkeeping: Reporting.

Estimated Time per Response: 30 minutes.

Estimated Total Burden Hours: 350.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $315.00. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 2, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–23639 Filed 10–6–08; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–067)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the Aerospace Safety Advisory Panel (ASAP).

DATES: Thursday, October 23, 2008, 1 p.m. to 3 p.m.

ADDRESSES: NASA Ames Conference Center (Building 3), Room: Ballroom, 500 Severyns Road, NASA Research Park, NASA Ames Research Center (ARC), Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, ASAP Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

SUPPLEMENTARY INFORMATION: The ASAP will hold its 4th Quarterly Meeting for 2008. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include ARC Overview, ARC Safety Status Update, Overview of New Human Rating Requirements for Space Systems, and Ares I Development Status.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch on (202) 358–0550 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. Visitors will need to show a valid picture identification such as driver's license to enter into the NASA Research Park, and must state they are attending the session in the NASA ARC Conference Center. To obtain a visitor badge, all visitors must go to Building 26, NASA Research Park, located at the main gate on Moffett Boulevard.

All non-U.S. citizens must submit their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), place and date of entry into the U.S., and Passport information to include Country of issue, number, and expiration date to Rho Christensen, Protocol Specialist, Office of the Center Director, NASA ARC, Moffett Field, CA, by October 17, 2008. For questions, please call Rho Christensen at (650) 604–2476.

Al Condes,

Deputy Assistant Administrator for External Relations.

[FR Doc. E8–23611 Filed 10–6–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 165th Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on October 31, 2008 in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting, from 9 a.m. to 11:30 a.m. (ending time is approximate), will be open to the public on a space available basis. The meeting will begin with opening remarks and will include a poetry reading by David Lehman, a performance from Shakespeare by Aquila Theater Company, and a jazz performance by pianist Helen Sung. After the presentations the Council will review and vote on applications and guidelines, and the meeting will end with remarks and Council members' farewell to the Chairman.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: October 2, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. E8–23705 Filed 10–6–08; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses; Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 11, 2008 to September 24, 2008. The last biweekly notice was published on September 23, 2008 (73 FR 54862).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a

notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or

the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: August 28, 2008.

Description of amendments request: The amendment would relocate the main steam isolation valve times in Technical Specification (TS) section 3.7.2, ''Main Steam Isolation Valves (MSIVs)'' to the licensee controlled document that is referenced in the Bases. In addition, the valve isolation times in the TS are replaced with the phrase ''within limits.'' The changes are consistent with the Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF)–491, Revision 2, ''Removal of Main Steam and Main Feedwater Valve Isolation Times From Technical Specifications.'' The availability of the TS improvement was published in the **Federal Register** on December 29, 2006 (71 FR 250) as part of the consolidated item improvement process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows relocating main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–491 related to relocating the main steam and main feedwater valves isolation times to the Licensee Controlled Document that is referenced in the Bases and replacing the isolation time with the phrase, ''within limits.''

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes relocate the main steam and main feedwater isolation valve times to the Licensee Controlled Document that is referenced in the Bases. The requirements to perform the testing of these isolation valves are retained in the TS. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, tests and experiments'', to ensure that such changes do not result in more than minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phrase ''within limits''. The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal pant operation. The requirements in the TS continue to require testing of the main steam and main feedwater isolation valves to ensure the proper functioning of these isolation valves.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phrase ''within limits.'' Instituting the proposed changes will continue to ensure the testing of main steam and main feedwater isolation valves. Changes to the Bases are license controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that main steam and feedwater isolation valve testing is conducted such that there is no significant reduction in the margin of safety.

The margin of safety provided by the isolation valves is unaffected by the proposed changes since there continue to be TS requirements to ensure the testing of main steam and main feedwater isolation valves. The proposed changes maintain sufficient controls to preserve the current margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel–Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Mark G. Kowal.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: June 19, 2008.

Description of amendments request: The proposed change would: (1) Revise Technical Specifications (TS) control rod notch surveillance requirement (SR) frequency in TS 3.1.3, ''Control Rod Operability,'' and (2) revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test extension. The licensee

is proposing to adopt the approved Technical Specification Task Force (TSTF) change traveler TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency.'' A notice of availability of TSTF–475, Revision 1, was published in the **Federal Register** on November 13, 2007 (72 FR 63935).

In addition, the proposed amendment would remove Note 2 associated with SR 3.1.3.3 for Unit 1, which is a cycle-specific note and has expired. This change is administrative in nature and does not affect the no significant hazards consideration (NSHC) determination.

Basis for proposed NSHC determination: As required by 10 CFR 50.91(a), the licensee, in its application dated June 19, 2008, affirmed the applicability of the published model NSHC determination, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM Insert Control Rod Action.'' TSTF–475, Revision 1 modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, ''Control Rod OPERABILITY'', (2) [not applicable to BSEP], and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

TSTF–475, Revision 1 will: (1) revise the TS SR 3.1.3.2 frequency in TS 3.1.3, ''Control Rod OPERABILITY'', (2) [not applicable to BSEP], and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The GE Nuclear Energy Report, ''CRD Notching Surveillance Testing for Limerick Generating Station,'' dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency. Therefore, the proposed changes in TSTF–475, Revision 1 [. . .] do not involve a significant reduction in a margin of safety.

Based on the review of the above analysis, the NRC staff finds that the three standards in 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: David T. Conley, Associate General Counsel II–Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: June 19, 2008.

Description of amendments request: The proposed change would revise Limiting Condition for Operation (LCO) 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than 212 degrees Fahrenheit (°F) as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4.

The NRC issued a ''Notice of Availability of Model Application on Technical Specification Improvement to Modify Requirements Regarding LCO 3.10.1, Inservice Leak and Hydrostatic Testing Operation Using the Consolidated Line Item Improvement Process,'' associated with Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–484, Revision 0, in the **Federal Register** on October 27, 2006 (71 FR 63050). The NRC also issued a **Federal Register** notice on August 21, 2006 (71 FR 48561) that provided a model safety evaluation and a model no significant hazards consideration (NSHC) determination relating to modification of requirements regarding LCO 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation.'' In its application dated June 19, 2008, the licensee affirmed the applicability of the model NSHC determination.

Basis for proposed NSHC determination: As required by 10 CFR Part 50.91(a), an analysis of the issue of NSHC determination is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change presents NSHCs under the standards set forth in 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: David T. Conley, Associate General Counsel II–

Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Entergy Nuclear Operations, Inc., Docket No. 50–3, Indian Point Energy Center, Unit 1 Westchester County, New York

Date of amendment request: June 26, 2008.

Description of amendment request: The proposed amendment would delete license conditions and Technical Specification (TS) requirements which relate to the storage of spent nuclear fuel in the Indian Point Unit 1 (IP1) Fuel Handling Building Spent Fuel Pool. The spent fuel is to be transferred to, and stored at, the existing Indian Point Independent Spent Fuel Storage Installation (ISFSI), Docket No. 72–51. The removal of the stored spent fuel and drain down of the spent fuel pools renders many of the license conditions and TS requirements unnecessary and burdensome.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are all contingent on the prior removal of the stored spent fuel from the IP1 Spent Fuel Pool (SFP) to the Indian Point Energy Center (IPEC) ISFSI. The accidents previously evaluated in the IP1 Final Safety Analysis Report (FSAR), which consists of the IP1 Decommission Plan and Supplemental Environmental Information, are stored fuel related accidents. The removal of the stored fuel from the IP1 facility to the IPEC ISFSI precludes the possibility of these accidents.

Consequently, the proposed changes to the license do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2. Does the proposed change create the probability of a new or different accident from any accident previously evaluated?

The proposed changes are all contingent on the prior removal of the stored spent fuel from the IP1 SFP to the IPEC ISFSI. With the removal of the stored spent fuel from the IP1 facility, and considering the IP1 has been in a SAFESTOR mode for over thirty years, no significant source term remains which could result in any postulated radiological event that would impact the health and safety of the public.

Therefore, the proposed changes to the IP1 license consequently do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes are all contingent on the prior removal of the stored spent fuel from the IP1 SFP to the IPEC ISFSI. Upon the removal of spent fuel, the Technical Specifications being deleted no longer are required to protect the health and safety of the public or occupational workers from the potential adverse conditions, hazards or accidents as discussed in the FSAR.

Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Theodore Smith, Acting.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 11, 2008.

Description of amendment request: The amendment would revise several surveillance requirements (SRs) and add SR 3.8.1.21 in Technical Specification (TS) 3.8.1, ''AC [alternating current] Sources—Operating,'' and TS 3.8.2, ''AC Sources—Shutdown.'' The amendment would allow the slow-start testing sequence of the diesel generators in order to reduce the stress and wear on the equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change affects the surveillance requirements for the Diesel Generators (DGs). The DGs are onsite standby power sources intended to provide redundant and reliable power to ESF [Engineered Safety Feature] systems credited as accident mitigating features in design basis [accident] analyses. Per NRC Regulatory Guide (RG) 1.9, Revision 3, which is referenced in Grand Gulf Nuclear Station (GGNS) UFSAR [Updated Final Safety Analysis Report Section] 8.3.1.2.1, the proposed change is intended to allow slower starts of the DGs during testing in order to reduce DG aging effects due to excessive testing conditions. As such, the proposed change will result in improved DG reliability and availability, thereby providing additional assurance that the DGs will be capable of performing their safety function. The method of starting the emergency diesel generators for testing purposes does not affect the probability of any previously evaluated accident. Although the change allows slower starts for the monthly tests, the more rapid start function, assumed in the accident analysis, is unchanged and will be verified on a 184 day frequency. Therefore the accident analysis consequences are not affected [by the proposed change].

Therefore, the proposed change does not involve a significant increase in the probability [or] consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects the surveillance requirements for the onsite ac sources, i.e. the Diesel Generators. Accordingly, the proposed change does not involve any change to the configuration or method of operation of any plant equipment that could cause an accident. In addition, no new failure modes have been created nor has any new limiting failure been introduced as a result of the proposed surveillance changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is intended to bring the existing GGNS TS requirements for the onsite AC sources in line with regulatory guidance. Under the proposed change, the DGs will remain capable of performing their safety function, and the effects of aging on the DGs will be reduced by eliminating unnecessary testing. The DG start times assumed in the current accident analyses are unchanged and will be verified on a 184 day frequency.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340

Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

GE Hitachi Nuclear Energy (GEH), License No. DR–10, Docket No. 50–183, ESADA Vallecitos Experimental Superheat Reactor (EVESR)

Date of amendment request: June 23, 2008.

Description of amendment request: The proposed license amendment would modify the Technical Specification (TS) requirements to revise the scope of dismantling activities that GEH can perform under The Vallecitos Nuclear Center Liabilities Reduction Project and specify radiological control requirements of 10 CFR Part 20. Two TS changes are proposed. The proposed changes to the TS:

- Allow GEH to conduct dismantling activities below the 549-ft elevation level within the containment building; and
- Revise the physical security requirements for access to areas below the 549-ft elevation level within the containment building.

The application for license amendment is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the June 23, 2008, request is ML081780099.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, 01F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Proposed change one is an administrative change submitted to clarify the area where dismantling activities will occur as authorized by the facility license. The majority of the component removal activities will occur in areas below the 549-ft. elevation. Proposed change two removes the specific shielding and covering requirements for the reactor vessel, shield plug storage pit and the empty spent fuel storage pit and modifies the access control requirements to be consistent with 10 CFR 20. The EVESR reactor was shutdown in 1967 and has remained in a ''Possess Only'' status. All fuel bundles were removed from the facility and the radiation and contamination levels have been reduced by the removal of radioactive material and natural decay. No aspect of the proposed changes will involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident evaluated?

Response: No.

Proposed change one is an administrative, therefore there it cannot create a new or different kind of accident. Removal of the specific shielding and covering requirements for the reactor vessel, shield plug storage pit and the empty spent fuel storage pit and modification of the access control requirements as described in proposed change two will not impact the function or integrity of the reactor pressure vessel, which is the primary safety system required to be maintained by the license. The proposed changes do not create the possibility of a new or different kind of accident from any accident evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

Removal of the specific shielding, covering and access control requirements will not result in a reduction of the margin of the safety for the EVESR facility. These controls were implemented to provide shielding and access controls to High Radiation Areas. Since the reactor is no longer operating and the radiological conditions have been significantly reduced, the specific controls specified in the current technical specifications are not required. All areas in the EVESR containment will be controlled in accordance with 10 CFR 20. High Radiation areas will be controlled in a manner consistent with the requirements of 10 CFR 20.1601. The proposed changes do not affect the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based upon the staff's review of the licensee's analysis, as well as the staff's own evaluation, the staff concludes that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

GEH, Manager, Regulatory Compliance & EHS: LaTonya L. Mahlahla.

NRC Branch Chief: Andrew Persinko.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station Unit Nos. 1 and 2 (NMP 1 and 2), Oswego County, New York

Date of amendment request: June 24, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) by (1) replacing the references to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code); and (2) revising the allowance to extend Inservice Testing (IST) frequencies by 25 percent to clearly state that the allowance is applicable to IST frequencies of 2 years or less. The proposed changes are based on TS Task Force (TSTF) Standard Technical Specification Change Traveler 479–A, Revision 0, ''Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the IST Program sections of the NMP1 and NMP2 TS to maintain consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the IST of pumps and valves that are classified as ASME Code Class 1, Class 2, and Class 3. The proposed changes incorporate revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The proposed changes also revise the allowance to extend IST frequencies by 25 percent to clearly state that this allowance is applicable to IST frequencies of 2 years or less.

The proposed TS changes are administrative in nature. They do not impact any accident initiators, the ability to mitigate previously evaluated accidents, or the assumptions used in evaluating the radiological consequences of previously evaluated accidents. The proposed changes do not involve the addition or removal of any equipment, or any design changes to the facilities.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes revise the IST Program sections of the NMP1 and NMP2 TS to maintain consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the IST of pumps and valves that are classified as ASME Code Class 1, Class 2, and Class 3. The proposed changes incorporate revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The proposed changes also revise the allowance to extend IST frequencies by 25 percent to clearly state that this allowance is applicable to IST frequencies of 2 years or less.

The proposed TS changes are administrative in nature. They do not involve a modification to the physical configuration of the plants (i.e., no new equipment will be installed) or involve a change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or failure mechanism.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes are administrative in nature. They do not involve a modification to the physical configuration of the plants (i.e., no new equipment will be installed) or change the methods governing normal plant operation. The proposed changes do not modify the safety limits or setpoints at which protective actions are initiated, and do not change the requirements governing operation or availability of safety equipment assumed to operate to preserve margins of safety. The incorporation of revisions to the ASME Code results in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 7, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) testing frequency for the Surveillance Requirement (SR) in TS 3.1.4, ''Control Rod Scram Times.'' The proposed change revises the frequency of SR 3.1.4.2, control rod scram time testing, from ''120 days cumulative operation in Mode 1'' to ''200 days cumulative operation in Mode 1.'' These changes are based on TS Task Force (TSTF) change traveler TSTF–460 (Revision 0) that has been approved generically for the Boiling-water reactor (BWR) Standard TS, NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) by revising the frequency of SR 3.1.4.2, control rod scram time testing, from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1.'' The NRC staff issued a notice of availability of a model no significant hazards consideration determination (NSHCD) for referencing in licensing amendment applications in the **Federal Register** on August 23, 2004 (69 FR 51864) using the consolidated line item improvement process (CLIIP). The licensee affirmed the applicability of the model NSHC determination and the model safety evaluation in its application dated July 7, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC, based on the model NSHCD published in the **Federal Register** on August 23, 2004 (69 FR 51864), is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident, previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Mark Kowal.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 7, 2008.

Description of amendment request: PPL Susquehanna, LLC (the licensee) requests adoption of the Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) change traveler TSTF–475, (Revision 1), ''Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action,'' to change the Standard Technical Specifications (STS) for General Electric (GE) Plants (NUREG–1433, BWR/4 to the plant specific TS, that allows: (1) Revising the frequency of Surveillance Requirement (SR) 3.1.3.2, notch testing of fully withdrawn control rod, from ''7 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of RWM'' to ''31 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP [Low Power Set Point] of the RWM [Rod With Minimizer]'', and (2) revising Example 1.4–3 in Section 1.4 ''Frequency'' to clarify that the 1.25 surveillance test interval extension in SR 3.0.2 is applicable to time periods discussed in NOTES in the ''SURVEILLANCE'' column in addition to the time periods in the ''FREQUENCY'' column.

The NRC staff issued a notice of availability in the **Federal Register** on November 13, 2007, (72 FR 63935), which included a model safety evaluation (SE) and model no significant hazards consideration determination (NSHCD), using the consolidated line-item improvement process (CLIIP), of possible amendments to revise the plant specific TS, to allow: (1) Revising the frequency of SR 3.1.3.2, notch testing of fully withdrawn control rod, from ''7 days after the control rod

is withdrawn and THERMAL POWER is greater than the LPSP of RWM'' to ''31 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of the RWM'', (2) adding the word ''fully'' to LCO 3.3.1.2 Required Action E.2 to clarify the requirement to fully insert all insertable control rods in core cells containing one or more fuel assemblies when the associated SRM instrument is inoperable, and (3) revising Example 1.4–3 in Section 1.4 ''Frequency'' to clarify that the 1.25 surveillance test interval extension in SR 3.0.2 is applicable to time periods discussed in NOTES in the ''SURVEILLANCE'' column in addition to the time periods in the ''FREQUENCY'' column. The licensee affirmed the applicability of the model SE and model NSHC determination in its application dated July 7, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC, based on the model NSHCD published in the **Federal Register** on November 13, 2007 (72 FR 63935), is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM Insert Control Rod Action.'' TSTF–475, Revision 1 modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, ''Control Rod OPERABILITY'', (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, ''Source Range Monitoring Instrumentation'' (NUREG–1434 only), and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. Implementing TSTF–475, Revision 1 does not change the control rod notch test method. Implementing TSTF–475, Revision 1 decreases the performance frequency of the control rod notch test. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed amendment will: (1) Revise the TS SR 3.1.3.2 frequency in TS 3.1.3, ''Control Rod OPERABILITY'', and (2) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The GE Nuclear Energy Report, ''CRD Notching Surveillance Testing for Limerick Generating Station,'' dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency. Therefore, the proposed changes in TSTF–475, Revision 1 do not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Mark Kowal.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 21, 2008.

Description of amendment request: The proposed amendments would delete the requirements related to plant staff working hours from Section 6.0, ''Administrative Controls'' of the respective plants' Technical Specifications (TSs). The current working hour requirements were incorporated into the TSs as a result of the guidance in Nuclear Regulatory Commission (NRC) Generic Letter (GL) 82–12, ''Nuclear Power Plant Staff Working Hours.'' The guidance in GL 82–12 has been superseded by the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 26, ''Fitness for Duty Programs,'' Subpart I, ''Managing Fatigue'' which was published in the **Federal Register** on March 31, 2008, as part of the final rulemaking for Part 26. As discussed in the **Federal Register** notice for the final rule (73 FR 16966), Subpart I must be implemented by licensees no later than October 1, 2009. The licensee stated that the proposed amendments would support implementation of the new requirements in Subpart I.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The removal of GL 82–12 administrative controls will not remove the requirement to control work hours and manage fatigue. Removal of TS controls required by GL 82–12 will be performed concurrently with the implementation of the more conservative [10 CFR Part 26], Subpart I, requirements. The proposed changes do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact the mitigation of accidents or transient events.

Because these new requirements are more conservative with respect to work hour controls and fatigue management, this will not significantly increase the probability or consequence of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove GL 82–12 administrative controls from [the] TS to support the implementation of Subpart I to [10 CFR Part 26]. The Subpart I regulations are more restrictive than the current guidance in [the] TS and would add conservatism to work hour controls and fatigue management. Work hours will continue to be controlled in accordance with NRC requirements. The new rule continues to allow for deviations from controls to mitigate or prevent a condition adverse to safety or necessary to maintain the security of the facility. This ensures that the new rule will not restrict work hours at the

expense of the health and safety of the public as well as plant personnel. The proposed changes do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, add any initiators, or impact the function of plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected.

Because the proposed changes do not remove the station's requirement to control work hours and increases the conservatism of work hour controls by changing administrative scheduling requirements, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

An input to maintaining the margin of safety is the control of work hours in managing fatigue. Salem and Hope Creek Generating Stations will continue their fitness-for-duty and behavioral observation programs, both of which will be strengthened by compliance with the new Part 26 regulation. The proposed changes add conservatism to fatigue management and contribute to the margin of safety. The proposed changes do not involve any physical changes to plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions of operation, or design parameters for any SSC. The proposed changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting an accident analysis. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, with changes in the areas noted above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 30, 2008.

Description of amendment request: The proposed amendment would relocate Technical Specification (TS) 3/4.7.5, ''Snubbers,'' to the Hope Creek Generating Station (HCGS) Technical Requirements Manual (TRM). TS 6.10.3.l, which specifies retention requirements for records of snubber service life monitoring pursuant to TS 4.7.5, would also be relocated to the TRM. In addition, the amendment would add new TS Limiting Condition for Operation (LCO) 3.0.8, ''Inoperability of Snubbers,'' and would modify LCO 3.0.1 to reference LCO 3.0.8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to relocate TS 3/4.7.5 to the TRM is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. Snubber operability and surveillance requirements will be contained in the TRM to ensure design assumptions for accident mitigation are maintained.

The proposed change to add LCO 3.0.8 allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. Entrance into TS actions or delaying entrance into actions is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on [the] allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the current TS required actions in effect without the allowance provided by proposed LCO 3.0.8.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to relocate TS 3/4.7.5 to the TRM is administrative and does not involve any physical alteration of plant equipment. The proposed change does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to add LCO 3.0.8 does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to relocate TS 3/4.7.5 to the TRM is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by requirements that are retained, but relocated from the TS to the TRM.

The proposed change to add LCO 3.0.8 to [the] TS allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform the required safety function. The proposed change retains an allowance in the current HCGS TS while upgrading it to be more conservative for snubbers supporting multiple trains or sub-systems of an associated system. The updated TS will continue to provide an adequate margin of safety for plant operation upon incorporation of LCO 3.0.8. The station design and safety analysis assumptions provide margin in the form of redundancy to account for periods of time when system capability is reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, with changes in the areas noted above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 12, 2008.

Description of amendment request: The proposed amendment deletes License Condition 2.H, which requires reporting of violations of operating license requirements found in license condition 2.C.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the deletion of a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in that it deletes a reporting requirement. The change does not add new plant equipment, change existing plant equipment, or affect the operating practices of the facility. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change deletes a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Melanie C. Wong.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 3, 2008.

Description of amendment request: The proposed changes will revise Technical Specifications (TSs) 3.3.7, 3.3.8, 3.7.10, 3.7.13, 3.8.2, 3.8.5, 3.8.8, and 3.8.10. This amendment will (1) delete MODES 5 and 6 from the Control Room Emergency Ventilation System and its actuation instrumentation in TS 3.7.10 and TS 3.3.7; (2) adopt U.S. Nuclear Regulatory Commission (NRC)-approved traveler TSTF–36–A for TSs 3.3.8, 3.7.13, 3.8.2, 3.8.5, 3.8.8, and 3.8.10; and (3) add a more restrictive change to the Limiting Condition for Operation (LCO) Applicability for TSs 3.8.2, 3.8.5, 3.8.8, and 3.8.10 such that these LCOs apply not only during MODES 5 and 6, but also during the movement of irradiated fuel assemblies regardless of the MODE in which the plant is operating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to delete MODES 5 and 6 from the LCO Applicability of Technical Specifications (TSs) 3.3.7 and 3.7.10, adopt TSTF–36–A, and revise the LCO Applicability of the shutdown electrical specifications to be more restrictive does not alter plant design or operation; therefore, these changes will not increase the probability of any accident.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no design changes. All design, material, and construction standards that were applicable prior to this amendment request will be maintained. There will be no changes to any design or operating limits.

The proposed changes will not adversely affect accident initiators or precursors nor adversely alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes do not physically alter safety-related systems nor affect the way in which safety-related systems perform their functions.

Deleting MODES 5 and 6 from the LCO Applicability of TSs 3.3.7 and 3.7.10 does not significantly increase the consequences of any accident since it has been demonstrated that the radiological consequences to control room occupants from a waste gas decay tank rupture will remain much less than the regulatory limits with no mitigation from the Control Room Emergency Ventilation System (CREVS) in MODES 5 and 6. The acceptance criteria for this event will continue to be met.

The adoption of TSTF–36–A will not affect the equipment and LCOs needed to mitigate the consequences of a fuel handling accident in the fuel building; however, this change will reduce the chances of an unnecessary plant shutdown due to activities in the fuel building that have no bearing on the operation of the rest of the plant and the reactor core inside the containment building.

The changes to the shutdown electrical specifications will add an additional restriction that is consistent with the objective of being able to mitigate a fuel handling accident during all situations, including a full core offload, in which such an accident could occur.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. After a postulated release from a waste gas decay tank rapture no CREVS mitigation is required. The applicable radiological dose criteria will continue to be met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed design changes nor are there any changes in the method by which any safety-related plant structure, system, or component (SSC) performs its specified safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. Equipment performance necessary to fulfill safety analysis missions will be unaffected. The proposed changes will not alter any assumptions required to meet the safety analysis acceptance criteria. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

The proposed changes to delete MODES 5 and 6 from the LCO Applicability of TSs 3.3.7 and 3.7.10, adopt TSTF–36–A, and revise the LCO Applicability of the shutdown electrical specifications to be more restrictive do not, therefore, create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel-factor (FAH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met. It has been demonstrated that the CREVS and its actuation instrumentation are not required to mitigate the control room radiological consequences of a waste gas decay tank rupture.

The proposed changes do not eliminate any surveillances or alter the frequency of

surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analysis will be changed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 14, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS)'' to extend the Surveillance Frequency on selected ESFAS slave relays from 92 days to 18 months. Justification for extending the slave relay Surveillance Frequency is based on information contained in the Westinghouse Electric Corporation reports WCAP–13878–P–A, Revision 2 (proprietary version), and WCAP–14117–NP–A, Revision 2 (nonproprietary version), ''Reliability Assessment of Potter & Brumfield MDR Series Relays,'' dated August 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC), which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same Engineered Safety Feature Actuation System (ESFAS) instrumentation will be used and the same ESFAS system reliability is expected. Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no design changes. There will be no changes to any design or operating limits.

The proposed changes will not change accident initiators or precursors assumed or postulated in the Updated Safety Analysis Report (USAR) described accident analyses, nor will they alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes do not physically alter safety related systems, nor do they affect the way in which safety related systems perform their functions. All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR. The applicable radiological dose acceptance criteria will continue to be met.

Based on the above considerations, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed design changes, nor are there any changes in the method by which any safety-related plant SSC performs its specified safety function. Changing the interval for periodically verifying the ESFAS slave relays will not create any new accident initiators or scenarios. The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment. The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed change will not affect the total ESFAS response assumed in the safety analysis because the reliability of the slave relays will not be significantly affected by the increased surveillance interval. The relays have demonstrated a high reliability and insensitivity to short term wear and aging effects. The overall reliability, redundancy, and diversity assumed available for the protection and mitigation of accident and transient conditions is unaffected by this proposed change.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_2), nuclear enthalpy rise hot channel factor ($F_{\Delta H}$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria for design-basis transients and accidents will continue to be met.

None of the acceptance criteria for any accident analysis will be changed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 14, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' TS 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' and add New TS 3.7.19, ''Secondary System Isolation Valves (SSIVs).'' TS 3.7.2 is being revised to add MSIV bypass valves to the scope of TS 3.7.2. TS Table 3.3.2–1 is being revised to reflect the addition of the MSIV bypass valves to TS 3.7.2 and the associated applicability to be consistent with Westinghouse Standard Technical Specifications (NUREG–1431, Revision 31). TS 3.7.19 is being added to include a Limiting condition for Operation (LCO), Conditions/Required Actions and Surveillance Requirements for the steam generator blowdown isolation valves and steam generator blowdown sample isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration (NSHC), which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds requirements to the TS to ensure that systems and components are maintained consistent with the safety analysis and licensing basis.

Requirements are incorporated into the TS for secondary system isolation valves. These changes do not involve any design or physical changes to the facility, including the SSIVs themselves. The design and functional performance requirements, operational characteristics, and reliability of the SSIVs are unchanged.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no design changes. All design, material, and construction standards that were applicable prior to this amendment request will be maintained. There will be no changes to any design or operating limits.

The proposed changes will not change accident initiators or precursors assumed or postulated in the Updated Safety Analysis Report (USAR) described accident analyses, nor will they alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes do not physically alter safety related systems, nor do they affect the way in which safety related systems perform their functions. All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR. The applicable radiological dose acceptance criteria will continue to be met.

Based on the above considerations, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed design changes, nor are there any changes in the method by which any safety related plant SSC performs its specified safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety related system as a result of this amendment. The proposed amendment will not alter the design or performance of the [Analog Series] 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (FAH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria for design-basis transients and accidents will continue to be met.

The proposed changes do not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analysis will be changed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 18, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.5.2, ''ECCS [Emergency Core Cooling System]—Operating'' requirements. The change is in accordance with Technical Specification Task Force (TSTF) TSTF–325–A, Revision 0, ''ECCS Conditions and Required Actions with <100% Equivalent ECCS Flow.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC), which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change corrects the structure of the ACTIONS table to assure its correct application. There is no change or intent in the way the Conditions are actually applied. The literal interpretation of the existing Conditions structure could, under some circumstances, provide longer than intended Completion Times for restoration of OPERABILITY. Since the proposed change affects neither the Conditions intent nor its application, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change corrects the structure of the ACTIONS table to assure its correct application. The proposed change does not result in any physical alterations to the plant configuration, no new equipment additions, no equipment interface modifications, and no changes to any equipment function or the method of operating the equipment are being made. As the proposed change would not change the design, configuration or operation of the plant, no new or different kinds of accident modes are created. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed change corrects the structure of the LCO [Limiting Condition for Operation] to assure its correct application. The proposed change is consistent with the requirements of the Technical Specifications. There is no change in intent or in the way the LCO is applied. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 12, 2006, as supplemented by letters dated November 16, 2007, and May 16 and June 27, 2008.

Brief description of amendment: The amendment would increase the interval between the local power range monitor (LPRM) calibrations from 1000 megawatt-days/ton (MWD/T) to 2000 MWD/T as required by the Clinton Power Station technical specification surveillance requirements 3.3.1.1.8 and SR 3.3.1.2.2.

Date of issuance: September 12, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 181.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register***: May 22, 2007 (72 FR 28718). The November 16, 2007, and May 16 and June 27, 2008, supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2008.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423 Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendments: July 13, 2007, as supplemented by letters dated December 7, 2007, March 5, March 25, April 28, June 9, June 26, and July 28, 2008.

Brief description of amendments: The amendment changed the Millstone Power Station, Unit Nos. 2 and 3 Technical Specifications. This amendment established more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope in accordance with the Nuclear Regulatory Commission-approved Technical Specification Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' Additionally, the amendment changed the ''irradiated fuel movement'' terminology and adopted ''movement of recently irradiated fuel assemblies'' terminology with TSTF–448, Revision 3.

Date of issuance: September 18, 2008.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: 305 and 243.

Renewed Facility Operating License No. DPR–65 and NPF–49: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: May 16, 2008 and July 1, 2008 (73 FR 28534 and 73 FR 37506, respectively). The supplements dated June 9, June 26, and July 28, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 2008.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: July 30, 2007, as supplemented August 28, 2008.

Brief description of amendment: The amendment revises Technical Specifications 3.3.3.1, ''Post Accident Monitoring (PAM) Instrumentation,'' 3.3.6.1, ''Primary Containment Isolation Instrumentation,'' 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' and 3.6.4.2, ''Secondary Containment Isolation Valves (SCIVs).'' The proposed changes adopt the following TS Task Force (TSTF) Travelers that have been previously approved by the NRC: TSTF–45–A, Revision 2, TSTF–46–A, Revision 1, TSTF–207–A, Revision 5, TSTF–269–A, Revision 2, TSTF–295–A, Revision 0, TSTF–306–A, Revision 2, and TSTF–323–A, Revision 0.

Date of issuance: September 15, 2008.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 208.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: August 28, 2007 (72 FR 49573).

The supplemental letter dated August 28, 2008, provided additional information that clarified the

application, did not expand the scope of the application originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2008,

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: May 7, 2008

Brief description of amendment: The amendment revises Technical Specification Limiting Condition for Operation 3.10.1, and approves the associated Bases, to expand its scope to include provisions for temperature excursions greater than 200 degrees Fahrenheit as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4.

Date of issuance: September 16, 2008.

Effective date: As of its date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 209.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: July 15, 2008 (73 FR 40630). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 2008.

No significant hazards consideration comments received: No.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 19, 2008.

Brief description of amendment: The amendment revises the Technical Specification Actions for the Emergency Diesel Generators (EDG) to remove the conditional surveillance requirement to test the alternate EDG whenever one EDG is taken out of service for pre-planned preventive maintenance and testing.

Date of issuance: September 9, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 270.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: June 13, 2008 (73 FR 33853). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 2008.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 29, 2007.

Brief description of amendments: The amendments revised the Technical Specification (TS) 3.6.7, ''Spray Additive System,'' to allow modifications to the facility potentially required to address U.S. Nuclear Regulatory Commission (NRC) Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accident at Pressurized-Water Reactors'' and authorized changes to TS 3.6.7 to remove the current surveillances for sodium hydroxide and insert a surveillance to ensure equilibrium sump pH is greater than or equal to 7.1.

Date of issuance: September 12, 2008.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1–147, Unit 2–147.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: December 31, 2007 (72 FR 74360). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 2008.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: July 23, 2007, as supplemented by letter dated January 24, 2008.

Brief description of amendment: The amendment revises Technical Specification (TS) Section 3.1.1, ''Control Rod System,'' to incorporate a provision that should the rod worth minimizer (RWM) become inoperable before a reactor startup is commenced or before the first 12 control rods have been withdrawn, startup will be allowed to continue. This provision will rely on the RWM function being performed manually and will require a double check of compliance with the control rod program by a second licensed operator or other qualified member of the technical staff. The use of this allowance will be limited to one startup in the last calendar year.

Date of issuance: July 29, 2008.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 196.

Renewed Facility Operating License No. DPR–63: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register***: September 11, 2007 (72 FR 51863).

The supplemental letter dated January 24, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2008.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 16, 2008, as supplemented by letter dated August 6, 2008.

Brief description of amendment: The amendment conforms Renewed Facility Operating License No. DPR–22 to reflect the fact that Northern States Power Company holds the operating authority of the unit as of the date of this amendment. This license transfer was previously approved by an Order dated September 15, 2008.

Date of issuance: September 22, 2008.

Effective date: As of the date of issuance and shall be implemented within 1 year.

Amendment No.: 156.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: June 5, 2008 (73 FR 32057). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2008.

No significant hazards consideration comments received: As provided in 10 CFR 2.1315, no public comments with respect to significant hazards considerations were solicited.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: April 16, 2008, as supplemented by letter dated August 6, 2008.

Brief description of amendments: The amendments conform the Technical Specifications and Facility Operating License Nos. DPR–42 and DPR–60 to reflect the fact that Northern States Power Company holds the operating authority of the units as of the date of these amendments. This license transfer was previously approved by an Order dated September 15, 2008.

Date of issuance: September 22, 2008.

Effective date: As of the date of issuance and shall be implemented within 1 year.

Amendment Nos.: 188 (for Unit 1) and 177 (for Unit 2).

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Facility Operating Licenses and the Technical Specifications.

Date of initial notice in ***Federal Register***: June 5, 2008 (73 FR 32055). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 2008.

No significant hazards consideration comments received: As provided in 10 CFR 2.1315, no public comments with respect to significant hazards considerations were solicited.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 11, 2008, as supplemented on June 17, and July 23, 2008.

Brief description of amendments: The amendments revise the Technical Specification (TS) requirements for fuel decay time prior to commencing movement of irradiated fuel in the reactor pressure vessel.

Date of issuance: September 24, 2008.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment Nos.: 289 and 273.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revise the TSs and the license.

Date of initial notice in ***Federal Register***: July 15, 2008 (73 FR 40631). The letters dated June 17, and July 23, 2008, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: April 29, 2008.

Brief description of amendments: The amendments revise Technical Specification Figure 3.1.7–1, ''Sodium Penataborate Solution Volume Versus Concentration Requirements,'' by implementing an editorial change to improve the readability of the figure.

Date of issuance: September 23, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–257, Unit 2–201.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: June 3, 2008 (73 FR 31723). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: June 27, 2008.

Brief description of amendments: The amendments revised the combined Vogtle Electric Generating Plant, Units 1 and 2 Technical Specifications (TS) 5.5.9, ''Steam Generator (SG) Program'' and TS 5.6.10, ''Steam Generator Tube Inspection Report,'' to incorporate a one-cycle interim alternate repair criterion in the provisions for SG tube repair criteria for VEGP Unit 2 during refueling outage 2R13 and the subsequent operating cycle.

Date of issuance: September 16, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–152, Unit 2–133.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the technical specifications.

Date of initial notice in ***Federal Register***: July 14, 2008 (73 FR 40394). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 2008.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 27, 2007, as supplemented by letters dated March 27 and September 5, 2008.

Brief description of amendments: The amendments revised the South Texas Project, Units 1 and 2 fire protection program to allow the performance of operator manual actions to achieve and maintain safe shutdown in the event of a fire, in lieu of meeting circuit separation requirements specified in Title 10 of the *Code of Federal Regulations,* Part 50, Appendix R, Section III.G.2, for a fire in Fire Area 32 located in the Mechanical/Electrical Auxiliary Building. License Condition 2.E of the operating licenses is revised.

Date of issuance: September 16, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1–186, Unit 2–173.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses.

Date of initial notice in ***Federal Register***: November 20, 2007 (72 FR 65373). The supplemental letters dated March 27 and September 5, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 2008.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: September 19, 2007, as supplemented on April 11, 2008.

Brief Description of amendments: These amendments revised various Technical Specification (TS) setting

limits and the overtemperature ΔT/overpower ΔT time constants in TS 2.3 and TS 3.7. The methodology for determining the revised setting limits and time constants is in agreement with methods 1 and 2 in ''The Instrumentation, Systems, and Automation Society (ISA),'' Standard ISA–R67.04, Part II, ''Methodologies for the Determination of Setpoints for Nuclear Safety-Related Instrumentation.''

Date of issuance: September 17, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 261 and 261.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments changed the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: October 23, 2007 (72 FR 60036). The supplement dated April 11, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination published in the **Federal Register** on October 23, 2007. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2008.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of September 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–23342 Filed 10–6–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of October 6, 13, 20, 27, November 3, 10, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 6, 2008

Monday, October 6, 2008

12:55 p.m. Affirmation Session (Public Meeting) (Tentative)

a. *Oyster Creek, Indian Point, Pilgrim,* and *Vermont Yankee* License Renewals, Docket Nos. 50–219–LR, 50–247–LR, 50–286–LR, 50–293–LR, 50–271–LR, Petition to Suspend Proceedings (Tentative).

b. *Pacific Gas and Electric Co.* (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, Decision on the Merits of San Luis Obispo Mothers for Peace's Contention 2 (Tentative).

c. *EnergySolutions* (Radioactive Waste Import/Export)—EnergySolutions' Applications for Low-Level Radioactive Waste Import and Export Licenses (Tentative).

1 p.m. Discussion of Security Issues (Closed—Ex. 1 and 3).

Week of October 13, 2008—Tentative

There are no meetings scheduled for the week of October 13, 2008.

Week of October 20, 2008—Tentative

Wednesday, October 22, 2008

9:30 a.m. Briefing on New Reactor Issues—Construction Readiness, Part 1 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

1:30 p.m. Briefing on New Reactor Issues—Construction Readiness, Part 2 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

Both parts of this meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

Week of October 27, 2008—Tentative

There are no meetings scheduled for the week of October 27, 2008.

Week of November 3, 2008—Tentative

Thursday, November 6, 2008

1:30 p.m. Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301 415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Friday, November 7, 2008

2 p.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Tanny Santos, 301 415–7270).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

Week of November 10, 2008—Tentative

There are no meetings scheduled for the week of November 10, 2008.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov*.

Dated: October 2, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–23844 Filed 10–3–08; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0206; Form RI 25–37]

Submission for OMB Review; Request for Comments on a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''Evidence to Prove Dependency of a Child'' (OMB Control No. 3206–0206; form RI 25–37), is designed to collect sufficient information for OPM to determine whether the surviving child of a deceased federal employee is eligible to receive benefits as a dependent child.

Approximately 250 forms are completed annually. We estimate it takes approximately 60 minutes to assemble the needed documentation.

The annual estimated burden is 250 hours.

For copies of this proposal, contact Margaret A. Miller by telephone at (202) 606–2699, by FAX at (202) 418–3251, or by e-mail at *Margaret.Miller@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days of the date of this publication.

ADDRESSES: Send or deliver comments to: Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, and John W. Barkhamer, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW.,—Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–23607 Filed 10–6–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0167; Forms RI 34–1 and RI 34–3]

Proposed Information Collection; Request for Comment on a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for comment on a revised information collection. This information collection, ''Financial Resources Questionnaire'' (OMB Control No. 3206–0167; form RI 34–1), collects detailed financial information for use by OPM to determine whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. ''Notice of Amount Due Because Of Annuity Overpayment'' (OMB Control No. 3206–0167; form RI 34–3), informs the annuitant about the overpayment and collects information from the annuitant about how repayment will be made.

Comments are particularly invited on whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 520 RI 34–1 and 1,561 RI 34–3 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 520 hours and 1,561 hours respectively. The total annual estimated burden is 2,081 hours.

For copies of this proposal, contact Margaret A. Miller by telephone at (202) 606–2699, by FAX (202) 418–3251, or by e-mail at *Margaret.Miller@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–23608 Filed 10–6–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0173; Form SF 3102]

Proposed Information Collection; Request for Comments on a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''Designation of Beneficiary (FERS)'' (OMB Control No. 3206–0173; form SF 3102), is used by an employee or an annuitant covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Comments are particularly invited on whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 2,893 SF 3102 forms are completed annually. Each form will take approximately 15 minutes to complete. The annual estimated burden is 723 hours.

For copies of this proposal, contact Margaret A. Miller by telephone at (202) 606–2699, by FAX (202) 418–3251, or by e-mail to *Margaret.Miller@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days of the date of this publication.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW.—Room 3305, Washington, DC 20415–3500.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW.—Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–23609 Filed 10–6–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0234; STANDARD FORM (SF) 1153]

Submission for OMB Review: Comment Request for Review of a Revised Information Collection

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the U.S. Office of Personnel Management (OPM) submitted to the Office of Management and Budget (OMB) a request for review of an expiring information collection. This information collection, ''Claim for Unpaid Compensation of Deceased Civilian Employee'' (OMB Control No. 3206–0234; SF 1153), is used to collect information from individuals who have been designated as beneficiaries of the unpaid compensation of a deceased Federal civilian employee or who believe that their relationship to the deceased entitles them to receive the unpaid compensation of the deceased employee. OPM needs this information in order to adjudicate the claim and properly assign a deceased Federal civilian employee's unpaid compensation to the appropriate individuals(s).

We received no comments on our 60-day notice on this information collection (SF 1153), published in the **Federal Register** on June 17, 2008.

Approximately 3,000 SF 1153 forms are submitted annually. It takes approximately 15 minutes to complete the form. The annual estimated burden is 750 hours.

For copies of this proposal, contact Margaret A. Miller by telephone at (202) 606–2699, by FAX at (202) 418–3251, or by e-mail at *Margaret.Miller@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Robert D. Hendler, Program Manager, Center for Merit Systems Accountability, Division for Human Capital Leadership and Merit System Accountability, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6484, Washington, DC 20415; and

John W. Barkhamer, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–23610 Filed 10–6–08; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2008–8 and CP2008–26; Order No. 111]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 1 to the Competitive Product List. The Postal Service has also filed a related contract. The notice addresses procedural steps associated with these filings.

DATES: Comments are due October 9, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 23, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add the Priority Mail Contract 1 product to the Competitive Product List. The Postal Service asserts that the Priority Mail Contract 1 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2008–8.[1]

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract is assigned Docket No. CP2008–26. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language and is set to expire 2 years from the effective date unless renewed by mutual consent.

Request. The Request is filed pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* The Request incorporates (1) A redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the MCS product list; (4) submission of supporting material under seal; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, it requests that the Priority Mail Contract 1 product be added to the competitive product list. Request at 1–2. The Postal Service states the service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs.[3] The Postal Service also asserts that the contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. As a result, the Request contends there will be no issue of subsidization of competitive products by market dominant products. *Id.* at 1.

The Postal Service's filing includes a redacted version of the contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. By its terms, the contract will expire 2 years from the effective date, which is proposed to be 1 day after the Commission approves the required addition of this product to the product list. The Postal Service maintains that the contract pricing and customer-

[1] Request of the United States Postal Service to Add Priority Mail Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, September 23, 2008 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rates and Class Not of General Applicability for Priority Mail Service (Governors' Decision No. 08–11). The Governors' Decision includes an attachment which is an analysis of the proposed Priority Mail Service Contract. Attachment B is the redacted version of the contract. Attachment C shows the requested changes in the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

[3] *See* Attachment D which provides information on the impact of the product cost and states that Priority Mail is provided in a highly competitive market which affects the pricing of these products.

specific information, as well as portions of the Governors' Decision, should remain confidential.

In its Request, the Postal Service provides an analysis of the contract which, among other things, concludes that it is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). The analysis notes that the contract is not risk free, but concludes that the risks are manageable. *See* Attachment to Governors' Decision.

II. Notice of Filings

The Commission establishes Docket Nos. MC2008–8 and CP2008–26 for consideration of the Request pertaining to the Priority Mail Contract 1 product and the related contract. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than October 9, 2008. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael Ravnitzky to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2008–8 and CP2008–26 for consideration of the matters raised in each docket.

2. The Commission, pursuant to 39 U.S.C. 505, appoints Michael Ravnitzky to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 9, 2008.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–23733 Filed 10–6–08; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28429; 812–13530]

Aberdeen Asset Management Inc. and Aberdeen Funds, et al.; Notice of Application

September 30, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Application: Applicants request an order that would permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within or outside the same group of investment companies.

Applicants: Aberdeen Funds (the ''Trust'') and Aberdeen Asset Management Inc. (the ''Adviser'').

Filing Dates: The application was filed on May 8, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected herein.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 27, 2008, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Adviser, 1735 Market Street, 37th Floor, Philadelphia, PA 19103; Trust, 5 Tower Bridge, 300 Barr Harbor Drive, Ste. 300, West Conshohocken, PA 19428.

FOR FURTHER INFORMATION CONTACT: Jean Minarick, Senior Counsel, at (202) 551–6811, or Marilyn Mann, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and offers multiple series, each of which has its own distinct investment objectives and policies (''Funds'').[1] The Trust currently offers 26 Funds. The Aberdeen Optimal Allocations Fund: Defensive; Aberdeen Optimal Allocations Fund: Moderate; Aberdeen Optimal Allocations Fund: Moderate Growth; Aberdeen Optimal Allocations Fund: Growth; and Aberdeen Optimal Allocations Fund: Specialty (collectively, the ''Optimal Allocation Funds'') are the only Funds that currently intend to rely on the requested relief. Shares of the Optimal Allocation Funds are offered directly to the public and may be offered to insurance company separate accounts (''Separate Accounts'') that fund variable annuity and variable life insurance contracts (''Variable Contracts'') issued by insurance companies that are not affiliates of the Adviser. The Separate Accounts may be registered under the Act (''Registered Separate Accounts''), or unregistered thereunder (''Unregistered Separate Accounts'').

2. The Adviser is a Delaware corporation and a registered investment adviser under the Investment Advisers Act of 1940, and serves as investment adviser to each Fund. The Adviser is a wholly owned subsidiary of Aberdeen Asset Management PLC.

3. Applicants request relief to permit: (a) Certain Funds (each a ''Fund of Funds'') to acquire shares of registered open-end management investment

[1] Applicants request that the order extend to any future series of the Trust, and any other existing or future registered open-end management investment companies and their series that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust and are, or may in the future be, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (included in the term, ''Funds''). The Trust is the only registered investment company that currently intends to rely on the requested order. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

companies (the ''Unaffiliated Funds'') and unit investment trusts (''Unaffiliated Trusts,'' and together with the Unaffiliated Funds, the ''Unaffiliated Underlying Funds'') that are not part of the same ''group of investment companies'' as defined in section 12(d)(1)(G)(ii) of the Act; (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer (''Broker'') registered under the Securities Exchange Act of 1934 to sell their shares to the Fund of Funds; (c) the Funds of Funds to acquire shares of certain other Funds (the ''Affiliated Funds,'' and together with the Unaffiliated Underlying Funds, the ''Underlying Funds''); and (d) the Affiliated Funds, their principal underwriters and any Brokers to sell their shares to the Fund of Funds. Certain of the Unaffiliated Underlying Funds have obtained exemptions from the Commission to permit their shares to be listed and traded on a national securities exchange at negotiated prices (''ETFs''). Each Fund of Funds may also invest in other securities and financial instruments that are not issued by registered investment companies and are consistent with its investment objective and restrictions. Any investment adviser to a Fund of Funds that meets the definition of section 2(a)(20)(A) of the Act is referred to as ''Fund of Funds' Adviser.''

Applicants' Legal Analysis

Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Unaffiliated Funds and Affiliated Funds, their principal underwriters and any Broker to sell their shares to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Underlying Fund, applicants submit that: (a) The Fund of Funds' Adviser and any person controlling, controlled by or under common control with the Fund of Funds' Adviser, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Fund of Funds' Adviser or any person controlling, controlled by or under common control with the Fund of Funds' Adviser (collectively, the ''Group''); and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (''Fund of Funds' Sub-Adviser''), any person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds' Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser (collectively, the ''Sub-Adviser Group'') will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 below precludes a Fund of Funds or the Fund of Funds' Adviser, any Fund of Funds' Sub-Adviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by, or under common control with any of those entities (each, a ''Fund of Funds Affiliate'') from taking advantage of an Unaffiliated Underlying Fund with respect to transactions between a Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or its investment adviser(s), sponsor, promoter, and principal underwriter and any person controlling, controlled by or under common control with any of those entities (each, an ''Unaffiliated Fund Affiliate''). No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, advisory board member, Fund of Funds' Adviser, Fund of Funds' Sub-Adviser or employee of the Fund of Funds, or a person of which any such officer, director, trustee, Fund of Funds' Adviser, Fund of Funds' Sub-Adviser, member of an advisory board, or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. To further assure that an Unaffiliated Fund understands the implications of a Fund of Funds' investment under the requested exemptive relief, prior to its investment in the shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, a Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that their boards of directors or trustees (''Boards'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an

Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.[2]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. To assure that the advisory fees are not duplicative, applicants state that, in connection with the approval of any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees'') will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that a Fund of Funds' Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Underlying Fund by the Fund of Funds' Adviser, or an affiliated person of the Fund of Funds' Adviser, other than any advisory fees paid to the Fund of Funds' Adviser or an affiliated person of the Fund of Funds'Adviser by the Unaffiliated Underlying Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rule 2830''), will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

9. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a Registered Separate Account funding Variable Contracts will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the separate account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

10. Applicants state that the proposed arrangement will not create an overly complex fund structure because no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 12 below. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain clear, concise, ''plain English'' disclosure designed to inform investors about the unique characteristics of the proposed arrangement, including, but not limited to, the expense structure and the additional expenses of investing in Underlying Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control of the Fund of Funds' Adviser and therefore affiliated persons of one another. Applicants also state that a Fund of Funds and the Underlying Funds may be deemed to be affiliated persons of each other if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[3]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the requirements for relief under sections 17(b) and 6(c) of the Act as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[4] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

[2] An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[3] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[4] Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Unaffiliated Underlying Fund. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person, or an affiliated person of an affiliated person of the Fund of Funds, in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group or the Sub-Adviser Group (except for any member of the Group or the Sub-Adviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Underlying Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by, or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or as the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its Variable Contract holders and will vote its shares of an Unaffiliated Underlying Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares; or (ii) seek voting instructions from its Variable Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Funds of Funds' Adviser and any Fund of Funds' Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Fund, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Fund. The Board of the Unaffiliated Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Unaffiliated Fund were made.

8. Prior to an investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Fund will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and

the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to reliance on the requested order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Funds of Funds' Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Underlying Fund by the Funds of Funds' Adviser, or an affiliated person of the Fund of Funds' Adviser, other than any advisory fees paid to the Fund of Funds' Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Any Fund of Funds' Sub-Adviser will waive fees otherwise payable to the Fund of Funds' Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Fund of Funds' Sub-Adviser, or an affiliated person of the Fund of Funds' Sub-Adviser, other than any advisory fees paid to the Fund of Funds' Sub-Adviser or its affiliated person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Fund of Funds' Sub-Adviser. In the event that the Fund of Funds' Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23691 Filed 10–6–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28431; 812–13540]

Eaton Vance Floating-Rate Income Trust, et al.; Notice of Application

October 2, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(a)(1)(A) and (B) of the Act.

APPLICANTS: Eaton Vance Floating-Rate Income Trust, Eaton Vance Senior Floating-Rate Trust, Eaton Vance Senior Income Trust, Eaton Vance Credit Opportunities Fund, and Eaton Vance Limited Duration Income Fund (each, a ''Fund'' and collectively, ''Funds'').

SUMMARY OF APPLICATION: Applicants request an order (''Order'') granting an exemption from sections 18(a)(1)(A) and (B) of the Act for a two-year period immediately following the date of the Order. The Order would permit each Fund to issue debt securities subject to asset coverage of 200% that would be used to refinance all of the Fund's issued and outstanding auction preferred shares (''APS Shares''). The Order also would permit each Fund to declare dividends or any other distributions on, or purchase, capital stock during the term of the Order, provided that any class of senior securities representing indebtedness has asset coverage of at least 200% after deducting the amount of such transaction.

FILING DATES: The application was filed on June 10, 2008, and amended on July 2, 2008, July 29, 2008, and September 2, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: c/o Frederick S. Marius, Chief Legal Officer, Eaton Vance Management, 255 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Janet M. Grossnickle, Assistant Director, at (202) 942–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. Each of the Funds is organized as a Massachusetts business trust and is a closed-end management investment company registered under the Act. Each Fund is advised by Eaton Vance Management (''Eaton Vance'') and has issued and outstanding a class of common shares and a class of one or more series of APS Shares.

2. Applicants state that the Funds issued their outstanding APS Shares for purposes of investment leverage to augment the amount of investment capital available for use in the pursuit of their investment objectives. Applicants state that, through the use of leverage, the Funds seek to enhance the investment return available to the holders of their common shares by earning a rate of portfolio return (which includes the return obtained from securities purchased from the proceeds of APS Share offerings) that exceeds the dividend rate that the Funds pay to holders of the APS Shares. Applicants represent that APS shareholders are entitled to receive a stated liquidation preference amount of $25,000 per share (plus any accumulated but unpaid dividends) in any liquidation, dissolution, or winding up of the relevant Fund before any distribution or payment to holders of the Fund's common shares. They state that dividends declared and payable on APS Shares have a similar priority over dividends declared and payable on the Funds' common shares. In addition, applicants state that APS Shares are ''perpetual'' securities and are not subject to mandatory redemption by a Fund (provided certain asset coverage tests are met). Further, applicants state that APS Shares are redeemable at each Fund's option.

3. Applicants state that prior to February 2008, dividend rates on the APS Shares for each dividend period were set at the market clearing rate determined through an auction process that brought together bidders, who sought to buy APS Shares, and holders of APS Shares, who sought to sell their APS Shares. Applicants explain that their by-laws provide that if an auction fails to clear (because of an imbalance of sell orders over bids), the dividend payment rate over the next dividend period is set at a specified maximum applicable rate (the ''Maximum Rate'') determined by reference to a short-term market interest rate (such as LIBOR or a commercial paper rate). Applicants state that an unsuccessful auction is not a default; the relevant Applicant continues to pay dividends to all holders of APS Shares, but at the specified Maximum Rate rather than a market clearing rate.

4. Applicants state that if investors did not purchase all of the APS Shares tendered for sale at an auction, dealers historically would enter into the auction and purchase any excess shares to prevent the auction from failing. Applicants represent that this auction mechanism generally provided readily available liquidity to holders of APS Shares for almost twenty years. Applicants believe that many investors invested short-term cash balances in APS Shares believing they were safe short-term investments and, in many cases, the equivalent of cash.

5. Applicants state that in February 2008, the financial institutions that historically provided ''back stop'' liquidity to APS Share auctions stopped participating in them and the auctions began to fail. Applicants state that beginning on February 13, 2008, all closed-end funds advised by Eaton Vance that had outstanding APS Shares (including the Funds) experienced auction failures due to an imbalance between buy and sell orders. Applicants also state that there is no established secondary market that would provide holders of APS Shares with the liquidation preference of $25,000 per share. Applicants state that four of the five Funds to date have redeemed approximately two-thirds of their APS Shares with borrowings from a commercial paper conduit facility, but have been prohibited from redeeming their remaining APS Shares because, among other reasons, they would not have the 300% asset coverage required by section 18(a)(1) of the Act after a full redemption of the APS Shares. As a result, applicants state that there is currently no reliable mechanism for holders of APS Shares to obtain liquidity, and believe that, industry-wide, the current lack of liquidity is causing distress for a substantial number of APS shareholders and creating severe hardship for many investors.

6. Applicants seek relief for a period of two years to facilitate temporary borrowings by the Funds that would enhance their ability to provide a liquidity solution to the holders of their APS Shares in the near term [1] while they seek a more permanent form of replacement leverage.[2] Because of the limited availability of debt financing in the current, severely constrained capital markets, the applicants believe that the negotiation, execution and closing of a borrowing transaction to replace the leverage currently represented by the APS Shares, if it can be effected, might take several months following the issuance of the Order. Once the debt incurred in replacement of the APS Shares is in place, it is uncertain whether and when the applicants will be able to issue LPP Shares to replace the debt, or how quickly the securities and capital markets will return to conditions that would enable the applicants to achieve compliance with the asset coverage requirements that would apply in the absence of the Order through some other means. In light of these factors, and given the continuing unsettled state of the securities and capital markets, which makes it impossible to establish a precise schedule for consummating capital markets transactions, the applicants believe that a two-year exemption period is reasonable and appropriate. Each Fund's refinancing of APS Shares would be subject to the Fund obtaining any necessary approval of changes to the Fund's fundamental investment policies and approval of the refinancing arrangements by the Fund's board of trustees (''Board'').

Applicants' Legal Analysis

1. Section 18(a)(1)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security representing indebtedness, or to sell such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 300% immediately after issuance or sale. Section 18(a)(2)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security that is a stock, or to sell any such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 200% immediately after such issuance or sale.[3]

2. Section 18(a)(1)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own capital stock unless its outstanding indebtedness will have an asset coverage of at least 300% immediately after deducting the amount of such dividend, distribution or

[1] Applicants note that the cost of the replacement leverage is expected, over time, to be lower than the total cost of APS Shares based on the Maximum Rates applicable to the APS Shares of those Funds.

[2] Eaton Vance and its affiliates, including the Funds, have recently obtained no-action relief from the Commission staff in connection with Liquidity Protected Preferred Shares (''LPP Shares''), a new type of preferred stock that the Funds potentially would issue to supplement or replace the existing APS Shares. *See* Eaton Vance Management, SEC No-Action Letter (June 13, 2008).

[3] Section 18(h) of the Act defines asset coverage of a senior security representing indebtedness of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer. The section defines asset coverage of the preferred stock of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer plus the amount the class of senior security would be entitled to on involuntary liquidation.

purchase price.[4] Section 18(a)(2)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own common stock unless its outstanding preferred stock will have an asset coverage of at least 200% immediately after deducting the amount of such dividend, distribution or purchase price.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request that the Commission issue an Order under section 6(c) of the Act to exempt each Fund from the 300% asset coverage requirements set forth in sections 18(a)(1)(A) and (B) of the Act. Specifically, the Funds seek relief from the section 18 asset coverage requirements for senior securities representing indebtedness for a period not to exceed two years from the date on which the requested Order is issued (the ''Exemption Period'') to permit the Funds to refinance any outstanding APS Shares issued prior to February 1, 2008 with debt so long as they have 200% asset coverage, rather than the 300% asset coverage that would ordinarily apply under section 18 to senior securities representing indebtedness, (a) when they incur that debt, and (b) when they declare dividends or any other distributions on, or purchase, their capital stock, after deduction of the amount of such dividend, distribution or purchase price. Applicants state that, except as permitted under the requested Order, if issued, the Funds would meet all of the asset coverage requirements of section 18(a) of the Act. In addition, applicants state that each Fund that borrows in reliance on the Order will either pay down or refinance the debt within the Exemption Period so that the Fund would, at the expiration of the Exemption Period and thereafter, comply with the applicable asset coverage requirements (200% for equity or 300% for debt) under section 18 of the Act.

5. Applicants state that section 18 reflects congressional concerns regarding preferential treatment for certain classes of shareholders, complex capital structures, and the use of excessive leverage. Applicants submit that another concern was that senior securities gave the misleading impression of safety from risk. Applicants believe that the request for temporary relief is necessary, appropriate and in the public interest and that such relief is consistent with the protection of investors and the purposes intended by the policy and provisions of section 18.

6. Applicants note that the illiquidity of APS Shares is a unique, exigent situation that is posing urgent, and in some cases devastating, hardships on APS shareholders. Applicants represent that the proposed replacement of the APS Shares with debt would provide liquidity for the Funds' APS shareholders while the Funds continue their efforts to obtain a more permanent form of financing (such as through the issuance of LPP Shares) that fully complies with the asset coverage requirements of section 18.[5]

7. Applicants state that the requested Order would permit the Funds to continue to provide their common shareholders with the enhanced returns that leverage may provide. Applicants also represent that the Order would help avoid the potential harm to common shareholders that could result if the Funds were to deleverage their portfolios in the current difficult market environment[6] or that could result if a reduction in investment return reduced the market price of common shares.

8. Applicants believe that the interests of both classes of the Funds' current investors would be well served by the requested order—the APS shareholders because they would achieve the liquidity that the market currently cannot provide (as well as full recovery of the liquidation value of their shares) and the common shareholders because the cost of the new form of leverage would, over time, be lower than that of the total cost of the APS Shares based on their Maximum Rates and the adverse consequences of deleveraging would be avoided.

9. Applicants represent that the proposed borrowing would be obtained from banks, insurance companies or qualified institutional buyers (as defined in Rule 144(a)(1) under the Securities Act of 1933) who would be capable of assessing the risk associated with the transaction. Applicants also state that, to the extent the Act's asset coverage requirements were aimed at limiting leverage because of its potential to magnify losses as well as gains, they believe that the proposal would not unduly increase the speculative nature of the Funds' common shares because the relief is temporary and the Funds would be no more highly leveraged if they replace the existing APS Shares with borrowing.[7] Applicants also state that the proposed liquidity solution would not make the Funds' capital structure more complex, opaque, or hard to understand or result in pyramiding or inequitable distribution of control.

10. Applicants state that the current state of the credit markets, which has affected the APS Shares, is an historic event of unusual severity, which requires a creative and flexible response on the part of both the public and private sectors. Applicants believe that these issues have created an urgent need for limited, quick, thoughtful and responsive solutions. Applicants believe that the request meets the standards for exemption under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each Fund that borrows subject to 200% asset coverage under the order will do so only if such Fund's Board, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) (''Independent Trustees''), shall have determined that such borrowing is in the best interests of such Fund, its common shareholders, and its APS shareholders. Each Fund shall make and preserve for a period of not less than six years from the date of such determination, the first two years in an

[4] An exception is made for the declaration of a dividend on a class of preferred stock if the senior security representing indebtedness has an asset coverage of at least 200% at the time of declaration after deduction of the amount of such dividend. *See* section 18(a)(1)(B) of the Act.

[5] *See supra* note 2.

[6] Applicants state that the bulk of each Fund's portfolio is in floating rate senior secured loans. Applicants believe that it is difficult to sell such loans at par value in the current market because of market makers' own impaired capital positions. Applicants expect, however, that the loans generally will be repaid in full as they come due. Applicants thus believe it would be disadvantageous to sell the loans at less than par into the current market.

[7] Applicants acknowledge that managing any portfolio that relies on borrowing for leverage entails the risk that, when the borrowing matures and must be repaid or refinanced, an economically attractive form of replacement leverage may not be available in the capital markets. For that reason, any portfolio that relies on borrowing for leverage is subject to the risk that it may have to deleverage, which could be disadvantageous to the portfolio's common shareholders. Applicants therefore state that they regard leveraging through borrowing as potentially a temporary, interim step, with the issuance of new preferred stock as a possible longer-term replacement source of portfolio leverage, such as LPP Shares.

easily accessible place, minutes specifically describing the deliberations by the Board and the information and documents supporting those deliberations, the factors considered by the Board in connection with such determination, and the basis of such determination.

2. Upon expiration of the Exemption Period, each Fund will have asset coverage of at least 300% for each class of senior security representing indebtedness.

3. The Board of any Fund that has borrowed in reliance on the order shall receive and review, no less frequently than quarterly during the Exemption Period, detailed progress reports prepared by management (or other parties selected by the Independent Trustees) regarding and assessing the efforts that the applicant has undertaken, and the progress that the applicant has made, towards achieving compliance with the appropriate asset coverage requirements under section 18 by the expiration of the Exemption Period. The Board, including a majority of the Independent Trustees, will make such adjustments as it deems necessary or appropriate to ensure that the applicant comes into compliance with section 18 of the Act within a reasonable period of time, not to exceed the expiration of the Exemption Period. Each Fund will make and preserve minutes describing these reports and the Board's review, including copies of such reports and all other information provided to or relied upon by the Board, for a period of not less than six years from the date of such determination, the first two years in an easily accessible place.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23672 Filed 10–6–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28428; 813–00355]

HLHZ Investments II, LLC and Houlihan, Lokey, Howard & Zukin, Inc.; Notice of Application

September 30, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

Summary of Application: Applicants request an order to exempt certain limited liability companies and other investment vehicles established primarily for the benefit of eligible employees of Houlihan, Lokey, Howard & Zukin, Inc. (''HLHZ'') and its affiliates from certain provisions of the Act. Each limited liability company or other investment vehicle will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Applicants: HLHZ Investments II, LLC (the ''Initial Fund'') and HLHZ.

Filing Dates: The application was filed on August 26, 2004 and amended on November 17, 2004, March 14, 2008, and June 20, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 27, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 1930 Century Park West, Los Angeles, CA 90067–6802.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. HLHZ is an investment banking firm organized under the laws of the State of California. HLHZ provides a range of investment banking services, including mergers and acquisitions, financing, financial opinions and advisory services and financial restructuring. HLHZ and its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''1934 Act''), are referred to collectively as ''HLHZ Group'' and each entity within HLHZ Group is referred to individually as a ''HLHZ Group entity.''

2. The Initial Fund is a California limited liability company. HLHZ Group may offer in the future other investment vehicles identical in all material respects to the Initial Fund (other than investment objectives and strategies and form of organization) (together with the Initial Fund, the ''Funds''). Each Fund will be a limited liability company or other investment vehicle formed as an ''employees' security company'' within the meaning of section 2(a)(13) of the Act. Each Fund will operate as a non-diversified, closed-end management company. The Funds have been or will be established primarily for key employees of the HLHZ Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate its recruitment of high caliber professionals.

3. Each Fund will have a managing member or general partner (''Manager'') that is an HLHZ Group entity and that will manage, operate, and control such Fund. The Manager will be registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') if required by applicable law. HLHZ, the Manager of the Initial Fund, is exempt from registration as an investment adviser under the Advisers Act. The Manager will be authorized to delegate investment management responsibility to a HLHZ Group entity or a committee of HLHZ Group employees. The ultimate responsibility for the Funds' investments will remain with the Manager. The Manager may be entitled to receive compensation or a performance-based fee (a ''carried interest'').[1]

[1] A ''carried interest'' is an allocation to the Manager based on net gains in addition to the amount allocable to such entity in proportion to its capital contributions. A Manager that is registered as an investment adviser under the Advisers Act may charge a carried interest only if permitted by rule 205–3 under the Advisers Act. Any carried interest paid to a Manager that is not registered under the Advisers Act will comply with section

4. Interests in the Funds (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''1933 Act'') or Regulation D under the 1933 Act (''Regulation D''). Interests will be sold only to ''Eligible Employees,'' ''Eligible Consultants'' or ''Qualified Entities,'' in each case as defined below, or to HLHZ Group entities. Prior to offering Interests in a Fund to an Eligible Employee or Eligible Consultant (either, an ''Eligible Participant'') or a Qualified Entity, the Manager must reasonably believe that each Eligible Participant that is required to make an investment decision with respect to whether or not to participate in a Fund, on behalf of itself or its related Qualified Entity, will be a sophisticated investor capable of understanding and evaluating the risks of participating in such Fund without the benefit of regulatory safeguards. All investors in a Fund will be ''Members'' and all Members in a Fund other than the Manager will be ''Participants.''

5. An ''Eligible Employee'' is an individual who is a current or former employee, officer, or director of HLHZ Group and (a) meets the standards of an ''accredited investor'' under rule 501(a)(5) or 501(a)(6) of Regulation D or (b) is one of 35 individuals who are ''knowledgeable employees,'' as defined in rule 3c–5(a)(4) under the Act (with the Fund treated as though it were a ''covered company'' for purposes of the rule) (such individuals, ''Non-Accredited Investors''). A Fund may not have more than 35 Non-Accredited Investors.

6. An ''Eligible Consultant'' is a natural person or entity that a HLHZ Group entity has engaged on retainer to provide services and professional expertise on an ongoing basis as regular consultants or business or legal advisors and shares a community of interest with the HLHZ Group and HLHZ Group employees and (a) meets the standards of an ''accredited investor'' under rule 501(a)(5) or 501(a)(6) of Regulation D, if a natural person or (b) meets the standards of an ''accredited investor'' under rule 501(a), if an entity.

7. In the discretion of a Manager and at the request of an Eligible Employee, Interests may be assigned to a Qualified Entity of an Eligible Employee or purchased by the Qualified Entity. A ''Qualified Entity'' is (a) a trust of which the trustee, grantor and/or beneficiary is an Eligible Employee, or (b) a partnership, limited liability company, corporation or other entity controlled by an Eligible Employee or Eligible Consultant, which trust or other entity meets the standards of an ''accredited investor'' under rule 501(a) of Regulation D.

8. The terms of a Fund will be fully disclosed to each Eligible Participant and, if applicable, to each Qualified Entity at the time they are invited to participate in a Fund. Each Eligible Participant and applicable Qualified Entity will receive a copy of the Fund's organizational documents prior to investment in the Fund. The Manager of each Fund will send Participants audited financial statements of the Fund as soon as practicable after the end of the Fund's fiscal year. In addition, the Manager will send a report to each Participant of the Fund setting forth the tax information necessary for the preparation of the Participant's federal and state income tax returns.

9. Interests in a Fund will be non-transferable except with the prior written consent of the Manager. No person will be admitted into a Fund unless the person is an Eligible Participant, a Qualified Entity, or an HLHZ Group entity. No sales load will be charged in connection with the sale of Interests.

10. The Initial Fund has the right, but not the obligation, to purchase all or any portion of the Interests of a Member who ceases to be a current employee, officer or director of HLHZ Group for any reason. The repurchase price for all or any portion of an Interest will be based on a preset book-value based formula set forth in the operating documents. The Manager of any Fund will have the absolute right to purchase any Interest from any Member, for a value determined by a formula set forth in the Fund's partnership or operating agreements, subscription agreements or similar documents, if the Manager determines in good faith that the Member's continued ownership of the Interest jeopardizes the Fund's status as an ''employees' securities company'' under the Act.

11. A Fund may invest its portfolio investments directly or indirectly through other pooled investment vehicles (including a limited partnership or limited liability company).[2] Subject to the terms of the applicable operating agreement, a Fund will be permitted to enter into transactions involving (a) a HLHZ Group entity, (b) a Fund investment, or (c) any Member or person or entity affiliated with a Member. Prior to entering into any of these transactions, the Manager must determine that the terms are fair to the Members.

12. A Fund will not borrow from any person if such borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). A Fund will not lend funds to any HLHZ Group entity.

13. A Fund will not acquire any security issued by a registered investment company if immediately after the acquisition, the Fund will own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53 of the Act, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations

205(b)(3) of the Advisers Act, with the Fund treated as a business development company solely for purposes of that section.

[2] Applicants are not requesting any exemption from any provision of the Act or any rule thereunder that may govern the eligibility of a Fund to invest in an entity relying on section 3(c)(1) or section 3(c)(7) of the Act or any such entity's status under the Act.

thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) An HLHZ Group entity, acting as principal, to engage in any transaction directly or indirectly with any Fund or any company controlled by such Fund; and (b) any Fund to invest in or engage in any transaction with any HLHZ Group entity, acting as principal, (i) in which the Fund, any company controlled by the Fund, or any HLHZ Group entity has invested or will invest, or (ii) with which the Fund, any company controlled by the Fund, or any HLHZ Group entity is or will become otherwise affiliated.

4. Applicants state that an exemption from section 17(a) is consistent with the policy of each Fund and the protection of investors. Applicants state that the Members in each Fund will be fully informed of the possible extent of the Fund's dealings with the HLHZ Group. Applicants also state that, as experienced professionals employed in investment banking, securities, or investment management businesses, Members in each Fund will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among Members and HLHZ Group is the best insurance against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief under rule 17d–1 to permit affiliated persons of each Fund, or affiliated persons of such persons, to participate in any joint arrangement in which the Fund or a company controlled by the Fund is a participant.

6. Applicants state that compliance with section 17(d) would cause a Fund to forego investment opportunities simply because a Participant in such Fund or other affiliated person of the Fund (or any affiliated person of the affiliated person) also had, or contemplated making, a similar investment. Applicants also submit that the types of investment opportunities considered by a Fund often require each participant to make available funds in an amount that may be substantially greater than that available to the Fund alone. Applicants contend that, as a result, the only way in which a Fund may be able to participate in such opportunities may be to co-invest with other persons, including its affiliates. Applicants assert that the flexibility to structure co-investments and joint transactions in the context of employees' securities companies will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 under the Act allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Manager for purposes of paragraph (b) of the rule; (b) for purposes of paragraph (d) of the rule, (i) employees of the Manager will be deemed to be employees of the Funds, (ii) officers of the Manager and the Manager of a Fund will be deemed to be officers of the Fund, and (iii) the members of the board of managers or directors of the Manager will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedures under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Manager. With respect to certain Funds, applicants expect that many of their investments will be evidenced only by partnership or operating agreements, subscription agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants believe that these instruments are most suitably kept in the Manager's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons (''independent directors'') take certain actions and give certain approvals relating to fidelity bonding. Applicants request relief to permit the Manager's board of managers or directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because all the members of a board of managers or directors of a Manager will be interested persons, a Fund could not comply with rule 17g–1 without the requested relief. Specifically, each Fund will comply with rule 17g–1 by having a majority of the members of the board of managers or directors of the Manager take such actions and make such approvals as are set forth in rule 17g–1. Applicants also request an exemption from the requirements of paragraph (g) of rule 17g–1 relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors, paragraph (h) of rule 17g–1 relating to the appointment of a person to make the filings and provide notices required by paragraph (g), and an exemption from the requirements of paragraph (j)(3) that the Funds comply with the fund governance standards defined in rule 0–1(a)(7). Applicants state that each Fund will comply with all other requirements of rule 17g–1.

9. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to a Fund and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Members. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the Manager of each Fund and any other persons who may be deemed to be members of an advisory board of a Fund from filing Forms 3, 4, and 5 under section 16(a) of the 1934 Act with respect to their ownership of Interests in the Fund.

Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

11. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities law and to appoint a chief compliance officer. Each Fund will comply will rule 38a–1(a), (c) and (d), except that (a) because the Fund does not have a board of directors, the board of managers or directors of the Manager will fulfill the responsibilities assigned to the Fund's board of directors under the rule, (b) because the board of managers or directors of the Manager does not have any independent directors, approval by a majority of the independent directors required by rule 38a–1 will not be obtained; and (c) because the board of managers or directors of the Manager does not have any independent directors, the Fund will comply with the requirement in rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the board of managers or directors of the Manager as constituted.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Fund is a party (the ''Section 17 Transaction'') will be effected only if the Manager determines that:

(a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Members of such Fund and do not involve overreaching of such Fund or its Members on the part of any person concerned; and

(b) The Section 17 Transaction is consistent with the interests of the Members of such Fund, such Fund's organizational documents and such Fund's reports to its Members.

In addition, the Manager of each Fund will record and preserve a description of Section 17 Transactions, the Manager's findings, the information or materials upon which the Manager's findings are based, and the basis for the findings. All such records will be maintained for the life of the Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. Each Fund will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

2. In connection with the Section 17 Transactions, the Manager of each Fund will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Fund, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The Manager of each Fund will not invest the funds of such Fund in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which such Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives such Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Fund has the opportunity to dispose of such Fund's investment prior to or concurrently with, and on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' means, with respect to any Fund: (a) An ''affiliated person'' (as defined in section 2(a)(3) of the Act) of such Fund; (b) any HLHZ Group entity; (c) an officer or director of HLHZ Group; (d) an entity in which the Manager acts as a managing member or a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which such Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of such Co-Investor or a trust or other investment vehicle established for any immediate family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the 1934 Act; (d) when the investment is comprised of NMS stocks pursuant to section 11A(a)(2) of the 1934 Act and rule 600(a) of Regulation NMS thereunder; (e) when the investment is comprised of government securities as defined in section 2(a)(16) of the Act; or (f) when the investment is comprised of securities that are listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Fund and the Manager will maintain and preserve, for the life of such Fund and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements that are to be provided to the Participants in such Fund, and each annual report of such Fund required to be sent to such Participants, and agree that all such records will be subject to examination by the Commission and its staff. Each Fund shall preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years after the inception of the Fund.

5. The Manager will send to each Participant who had an Interest in a Fund, at any time during the fiscal year then ended, Fund financial statements that have been audited by the Fund's independent accountants. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all of the assets of a Fund as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, within 120 days after the end of each fiscal year of the Fund or as soon as practicable after the end of each fiscal year, the Manager shall send a report to each person who was a Participant at any time during the fiscal year then ended setting forth tax information necessary for the preparation by the Participant of his or her federal and state income tax returns and a report of the investment activities of the Fund during that year.

6. If a Fund makes purchases or sales from or to an entity affiliated with the Fund by reason of an officer, director or employee of the HLHZ Group (a) serving as an officer, director, manager or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23689 Filed 10–6–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 58703]

Order Extending Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments

October 1, 2008.

On September 18, 2008, the Commission issued an Emergency Order pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') (the ''Order'') temporarily broadening Exchange Act Rule 10b–18's safe harbor from liability for issuer repurchases in order to facilitate orderly markets.[1] That Order became effective at 12:01 a.m. E.D.T. on September 19, 2008, and is currently set to terminate at 11:59 p.m. E.D.T. on October 2, 2008.

Pursuant to our authority under Section 12(k)(2)(C) of the Exchange Act, we are extending the Order. Section 12(k)(2)(C) authorizes the Commission to extend an emergency order issued pursuant to Section 12(k)(2)(A) of the Exchange Act for a total effective period of up to 30 calendar days, if the Commission finds that the emergency still exists and determines that an extension is necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets.

We have carefully reevaluated the current state of the markets and we remain concerned about the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Issuer repurchases can represent an important source of liquidity during these times of market volatility. Thus, we have determined in this environment that the standards under Section 12(k)(2) for extending the Order have been met. Accordingly, the Commission has determined that extending the Order is in the public interest and necessary to maintain fair and orderly securities markets and for the protection of investors.

Therefore, it is ordered, pursuant to Section 12(k)(2)(C) of the Exchange Act, that the Order is extended such that it will terminate at 11:59 p.m. E.D.T. on Friday, October 17, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23613 Filed 10–6–08; 8:45 am]

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[1] Exchange Act Release No. 58588 (Sept. 18, 2008).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 58711]

Order Extending Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments

October 1, 2008.

Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] on September 17, 2008, the Securities and Exchange Commission (''Commission'') issued an Emergency Order (the ''Order'') aimed at further reducing fails to deliver and addressing potentially abusive ''naked'' short selling in all equity securities.[2] The Order became effective at 12:01 a.m. E.D.T. on September 18, 2008 and is currently set to terminate at 11:59 p.m. E.D.T. on October 1, 2008.

Pursuant to our authority under Section 12(k)(2)(C) of the Exchange Act, we are extending the Order. Section 12(k)(2)(C) authorizes the Commission to extend an emergency order issued pursuant to Section 12(k)(2)(A) of the Exchange Act for a total effective period of up to 30 calendar days, if the Commission finds that the emergency still exists and determines that an extension is necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets.

We have carefully reevaluated the current state of the markets and we remain concerned about the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. We intend the enhanced delivery requirements (temporary Rule 204T and elimination of the options market maker exception) imposed by the Order and the ''naked'' short selling antifraud rule to provide powerful disincentives to those who might otherwise exacerbate artificial price movements through ''naked'' short selling. Thus, we have determined in this environment that the standards under Section 12(k)(2) for extending the Order have been met. Accordingly, we have determined that extending the Order is in the public interest and necessary to maintain fair and orderly securities markets and for the protection of investors.

In addition, we note that Staff of the Division of Trading and Markets has issued guidance regarding the Order to address current and anticipated technical and operational concerns resulting from the requirements of the Order.[3] The guidance will continue to apply for the duration of the Order and the Commission hereby incorporates and adopts the guidance.

It is therefore ordered that, pursuant to Section 12(k)(2)(C) of the Exchange Act, the Commission hereby incorporates and adopts the Division of Trading and Markets: Guidance Regarding the Commission's Emergency Order Concerning Rules to Protect Investors Against ''Naked'' Short Selling Abuses and the Division of Trading and Markets Guidance Regarding Sale of Loaned but Recalled Securities.

It is further ordered that, pursuant to Section 12(k)(2)(C) of the Exchange Act, the Order is extended such that it will terminate at 11:59 p.m. E.D.T. on Friday, October 17, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23614 Filed 10–6–08; 8:45 am]

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[1] 15 U.S.C. 78*l*(k)(2).

[2] *See* Securities Exchange Act Release No. 58572 (Sept. 17, 2008).

[3] *See http://www.sec.gov/divisions/marketreg/204tfaq.htm* and *http://www.sec.gov/divisions/marketreg/loanedsecuritiesfaq.htm.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58696; File No. SR–FICC–2008–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rules of the Government Securities Division To Expand the Types of Securities Eligible for the GCF Repo Service

September 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1).

September 9, 2008, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) thereunder [3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the rules of FICC's Government Securities Division (''GSD'') to expand the types of securities eligible for the GCF Repo service to include Separate Trading of Registered Interest and Principal Securities (''STRIPS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The GCF Repo service of FICC's GSD is a significant alternative financing vehicle to the delivery versus payment and tri-party repo markets. Currently, most Treasury securities, non-mortgage-backed Agency securities, fixed and adjustable rate mortgage-backed securities, and Treasury Inflation-Protected Securities (''TIPS'') are eligible for this service.[5] FICC is now proposing to expand the types of securities eligible for the GCF Repo service to include STRIPS. STRIPS are zero-coupon securities created by the U.S. Treasury by separating the principal and interest cash flows of Treasury notes, bonds, and TIPS. The principal and interest cash flows may then be owned and traded separately.

STRIPS, which are Fedwire-eligible securities, are generally accepted as collateral in tri-party repo arrangements. In addition, STRIPS are currently netting eligible for the GSD's delivery versus payment service.[6] FICC has received requests from members to make STRIPS eligible for the GCF Repo service. FICC has determined that with respect to its risk management processes STRIPS will be treated the same as all other GCF Repo-eligible collateral.

FICC would like to clarify that for purposes of GSD Rule 20, ''Special Provisions for GCF Repo Transactions,'' general references to U.S. Treasury bills, notes, or bonds do not currently and will not upon implementation of this proposal include STRIPS. Therefore, STRIPS could not be used within the GCF Repo service to satisfy obligations to post or return any other type of collateral. However, as is consistent with the existing GCF Repo provisions, U.S. Treasury bills, notes, bonds or cash may generally be used to satisfy obligations to post or return other collateral types, and therefore could be used to satisfy any such obligations involving STRIPS.

The proposed rule change is consistent with the requirements of Section 17A of the Act [7] and the rules and regulations thereunder applicable to FICC because it allows FICC to expand an important service that provides members with a continuing ability to engage in general collateral trading activity in a safe and efficient manner. As such, the proposed rule facilitates the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(4) [9] thereunder because the proposal effects a change in an existing service of FICC that does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and does not significantly affect the respective rights or obligations of FICC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2008–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2008–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by FICC.

[5] Securities Exchange Act Release Nos. 40623 (October 30, 1998), 63 FR 59831 (November 5, 1998) [File No. SR–GSCC–98–02], 42996 (June 30, 2000), 65 FR 42740 (July 11, 2000) [File No. SR–GSCC–00–04], and 51579 (April 20, 2005), 70 FR 21480 (April 26, 2005) [File No. SR–FICC–2005–08] for further information on the Commission's approval of the eligibility of such securities.

[6] FICC has obtained the Generic CUSIP Number necessary for the inclusion of STRIPS as a ''GCF Repo Security'' on its master file of eligible securities. Upon implementation of this proposal, FICC will effectuate the proposed change by listing this Generic CUSIP Number on the master file. The date of such listing will be announced to members by Important Notice.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available at FICC, the Commission's Public Reference Room, and *http://www.dtcc.com/downloads/legal/rule_filings/2008/ficc/2008–04.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2008–04 and should be submitted on or before October 28, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23688 Filed 10–6–08; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before November 6, 2008. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Compensation Agreement; Resolution of Board of Directors, and Certificates as to Partners.

SBA Form Numbers: 159(7a), 159(504), 159D, 160, 160A.

Frequency: On Occasion.

Description of Respondents: 7(A) Participants.

Responses: 27,753.

Annual Burden: 2,558.

Title: Statement of Debtor.

SBA Form Number: 770.

Frequency: On Occasion.

Description of Respondents: SBA Borrowers of guarantors who request compromise.

Responses: 5,000.

Annual Burden: 2,500.

Title: Servicing Agent Agreement.

SBA Form Number: 1506.

Frequency: On Occasion.

Description of Respondents: Certified Development Companies and SBA Borrowers.

Responses: 15,516.

Annual Burden: 15,516.

Title: Prime (Program for Investment in Microentrepreneurs).

SBA Form Number: N/A.

Frequency: On Occasion.

SBA Form Number: N/A.

Description of Respondents: Disadvantage Microentrepreneurs.

Responses: 156.

Annual Burden: 312.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–23647 Filed 10–6–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11456 and # 11457]

New Mexico Disaster # NM–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New Mexico dated 09/30/2008.

Incident: Severe Storms and Flooding.

Incident Period: 07/26/2008 through 08/20/2008.

Effective Date: 09/30/2008.

Physical Loan Application Deadline Date: 12/01/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/30/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Lincoln.

Contiguous Counties:

New Mexico: Chaves, De Baca, Guadalupe, Otero, Sierra, Socorro, Torrance.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11456 B and for economic injury is 11457 0.

The States which received an EIDL Declaration # are New Mexico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

[10] 17 CFR 200.30–3(a)(12).

Dated: September 30, 2008.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–23695 Filed 10–6–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2008–0056]

Future Systems Technology Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Inaugural Meeting.

DATES: October 23, 2008, 8:30 a.m.–5 p.m. and October 24, 2008, 8:30 a.m.–12 p.m.

Location: L'Enfant Plaza Hotel.

ADDRESSES: 480 L'Enfant Plaza SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: The Panel, under the Federal Advisory Committee Act of 1972, as amended, (hereinafter referred to as ''the FACA'') shall report to and provide the Commissioner of Social Security independent advice and recommendations on the future of systems technology and electronic services at the agency five to ten years into the future. The Panel will recommend a road map to aid SSA in determining what future systems technologies may be developed to assist in carrying out its statutory mission. Advice and recommendations can relate to SSA's systems in the area of internet application, customer service, or any other arena that would improve SSA's ability to serve the American people.

Agenda: The Panel will meet on Thursday, October 23, 2008 from 8:30 a.m. until 5 p.m. and Friday, October 24, 2008 from 8:30 a.m. to 12 p.m. The agenda will be available on the Internet at *http://www.ssa.gov/fstap/index.htm* or available by e-mail or fax on request, one week prior to the starting date.

During the first meeting the Panel will hear presentations on the status of electronic service delivery, systems technology and customer service issues within SSA; review the Panel charter and operating procedures; hold deliberations and discuss the Panel's organization, operating procedures, and the agenda for the future meetings.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

Mail addressed to SSA, Future Systems Technology Advisory Panel, Room 800, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–0001; Telephone at 202–358–6126; Fax at 202–358–6079; or E-mail to *FSTAP@ssa.gov*.

Dated: October 1, 2008.

Dianne L. Rose,

Designated Federal Officer, Future Systems Technology Advisory Panel.

[FR Doc. E8–23743 Filed 10–6–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6385]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dresden in Moonlight''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Dresden in Moonlight,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about October 15, 2008, until on or about May 31, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC. 20547–0001.

Dated: September 30, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–23711 Filed 10–6–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Civil Supersonic Aircraft Panel Discussion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting participation.

SUMMARY: This notice advises interested persons that the FAA is participating in a panel session on civil supersonic aircraft research. The session will include presentations on current research programs and a question and answer session for attendees. The FAA is seeking to raise public awareness of the continuing technological advances in supersonic aircraft technology aimed at reducing the intensity of sonic boom.

DATES: The public session will take place on October 24, 2008. The panel discussion is from 2:30 p.m. to 4:30 p.m. in Rosemont, IL.

ADDRESSES: The symposium is sponsored by the O'Hare Noise Compatibility Commission (ONCC) and will be held at the Hyatt Rosemont Hotel, 6350 N. River Road, Rosemont, IL. Attendance is open to all interested parties, and there are no fees to attend. The FAA panel discussion is the last item on the symposium agenda.

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; facsimile (202) 267–5594, telephone (202) 267–3561.

Background: Since March 1973, supersonic flight over land by civil aircraft has been prohibited in the United States. The Concorde was the only civil supersonic airplane that offered service to the United States, but that airplane is no longer in service.

The interest in supersonic aircraft technology has not disappeared. Current research is dedicated toward reducing the impact of sonic booms as they reach the ground, in an effort to make overland flight acceptable. Recent research has produced promising results for low boom intensity, and has renewed interest in developing supersonic civil aircraft that could be

considered environmentally acceptable for supersonic flight over land.

The FAA is leading a panel discussion entitled, ''State of the Art of Supersonics Aircraft Technology—What has progressed in science since 1973?'' The purpose of this panel session is to raise public awareness on advances in supersonic technology, and for the FAA, the National Aeronautics and Space Administration (NASA), and industry to get feedback from interested persons.

Public involvement is essential in any future definition of an acceptable new standard that would allow supersonic flights over land. We anticipate that this will be the first of many meetings informing the public on developments in the research of shaped sonic booms and other technical and environmental challenges that need to be addressed in developing a new supersonic airplane.

The FAA's presentation and panel discussion will take place on Friday, October 24, 2008, as part of the O'Hare Noise Compatibility Commission Symposium. It will be held at the Hyatt Rosemont Hotel, 6350 N. River Road, Rosemont, Illinois.

More information about the O'Hare Noise Compatibility Commission can be found at its Web site, *www.oharenoise.org.*

Issued in Washington, DC, on September 24, 2008.

Lynne Pickard,

Acting Director of Environment and Energy.

[FR Doc. E8–22898 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 26, Notice No. 1]

Emergency Order To Restrict On-Duty Railroad Operating Employees' Use of Cellular Telephones and Other Distracting Electronic and Electrical Devices

SUMMARY: This is an emergency order to restrict on-duty railroad operating employees from improperly using cellular telephones and other distracting electronic and electrical devices.

FOR FURTHER INFORMATION CONTACT: Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); or Ann M. Landis, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6064).

Introduction

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this emergency order restricting the improper use by railroad operating employees of certain electronic and electrical devices. Based on the historical record, rail passenger transportation in the United States is an extremely safe mode of transportation. However, recent incidents, including one that has claimed 25 lives, have caused DOT and FRA to have very serious concerns about the safety of the improper usage of cellular telephones (cell phones) and other electronic and electrical devices.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. 20104. These orders may impose such ''restrictions and prohibitions * * * that may be necessary to abate the situation.'' (*Ibid.*)

Background

Although most railroads have rules or procedures in place that prohibit or restrict the use of electronic devices such as cell phones and personal digital assistants (PDAs), these company rules and procedures have not proven effective in preventing serious train accidents caused by the unsafe use of such devices. That became clear only very recently in a decade-long course of FRA regulatory activity.

FRA Activity

When FRA amended 49 CFR Part 220-Radio Standards and Procedures on January 4, 1999, it was re-titled to ''Railroad Communications,'' to reflect its coverage of other means of wireless communications such as cell phones, data radio terminals, and other forms of wireless communications used to convey emergency and need-to-know information. The revisions to Part 220 were the result of recommendations by the Railroad Safety Advisory Committee's (RSAC) Working Group, which consisted of a diverse group of subject matter experts representing a wide array of railroad industry stakeholders.

In its deliberations, the Working Group examined extensive safety data, discussed how to improve compliance with existing Federal regulations on radio standards and procedures, and considered whether to mandate radios and other forms of wireless communications to convey emergency and need-to-know information. FRA sought comments on whether non-radio wireless communications procedures paralleling the radio procedures in Part 220 should be adopted for cell phones and other wireless devices. Particularly, FRA wanted to know whether on-radio wireless communications had the same opportunities for misunderstanding as radio transmissions and how such procedures would be enforced. After reviewing the comments, FRA decided, at that time, not to promulgate non-radio wireless communications procedures, based primarily on the fact that the Working Group did not consider in depth how to ensure the accuracy and completeness of non-radio wireless communications. Accordingly, in the final rule, FRA addressed only the testing and failure of non-radio wireless communications equipment (see 49 CFR 220.37 and 220.38, respectively).

However, FRA emphasized in the preamble to the final rule that the procedures in section 220.61 (radio transmission of mandatory directives) should be followed even when a cell phone or other form of wireless communication is used to transmit mandatory directives. FRA stated at the time that it reserved the right to revisit the issue of non-radio wireless communications procedures, if necessary.

On March 17, 2004, FRA met with the National Transportation Safety Board (NTSB or Safety Board) at what they termed a ''Safety With A Team'' (SWAT) meeting. As the result of Safety Recommendation R–03–1, FRA told the Safety Board that it had instructed its inspectors to increase its monitoring of unauthorized use of cell phones, but that enforcement of any regulation in this area would be challenging. FRA stated that it was in the process of gathering copies of enhanced railroad operating rules that strengthened the restrictions railroads placed on the use of cell phones and that it would review all of these rules and procedures governing cell phone use to look for gaps, and consider options, to include the issuance of a FRA Safety Advisory.

FRA also stated to the Board at the SWAT meeting that it would discuss the subject of cell phone usage with members of the full RSAC, and determine what actions, if any, FRA

should pursue in relation to this safety recommendation. At the full RSAC meeting conducted on April 27, 2004, FRA asked that the members of all organizations come to the next full RSAC meeting prepared to discuss what their current instructions were for cell phone use, whether they need to be improved, and whether this is a subject that should be tasked to a new RSAC Working Group. At this time, FRA explained to the Board that this new technology (cell phones and other wireless forms of communication) aids in reducing overcrowding of radio frequencies and that FRA wants to take advantage of the benefits that cell phones provide to the railroad industry.

Also at this time, FRA contacted the General Code of Operating Rules (GCOR) Committee, concerning the enhancement of GCOR Rule 1.10 (use of electronic devices) in the next edition of the GCOR, due to be published on April 3, 2005. The GCOR Committee, however, decided not to amend the rule at that time. Rather, their position was that each member road should address the cell phone issue in its individual special instructions.

In a letter to the NTSB, dated May 26, 2004, FRA subsequently provided copies of all relevant railroad operating rules and procedures relating to the use of cell phones and other wireless communication devices. FRA's initial review of this material indicated that, while there is some disparity with respect to the detail of prohibitions concerning cell phone use, all railroads canvassed did have a rule that prevented and/or limited cell phone use.

In the above-referenced letter to the Safety Board, FRA recounted its initial response to safety recommendation R–03–01, that it had changed the title of Part 220 to ''Railroad Communications'' to reflect coverage of other means of wireless communications such as cell phones, data radio terminals, and other forms of wireless communications used to convey emergency and need-to-know information. FRA also reminded the Board that the revisions to Part 220 that were effective in 1999 were the result of a recommendation by the full RSAC. Further, FRA acknowledged that there are many distractions in the course of day-to-day train operations that could momentarily divert a crewmember's attention, and that cell phones were just one of those mentioned. FRA still believed, at that time, that the operating rules of the railroad adequately addressed these situations and that responsibility for compliance rested with company officers and supervisors. Therefore, FRA concluded that the railroads' enforcement of their operating rules governing cell phone use was sufficient to address the issue without the intrusiveness of Federal intervention.

In a letter from NTSB to FRA, dated August 19, 2004, the Board classified safety Recommendation R–03–1 as ''Open-Acceptable Response.''

At the full RSAC meeting on September 22, 2004, members came prepared to discuss the issue of cell phone use, whether their current instructions were for cell phone use, whether they needed to be improved, and whether this was a subject that should be tasked to a new RSAC Working Group. This is an issue that appears in all forms of transportation. FRA pointed out that the proliferation of cell phone technology has now made the devices a necessity, also noting, though, that there are many examples of how the use of these devices by railroad employees in locomotive cabs of moving trains can be distracting.

FRA still believed, however, that Federal intervention in this area was not warranted at that time. FRA also acknowledged at a previous full RSAC meeting that, by the same token, there are many other distractions in the course of normal everyday train operations that could divert a crewmember's attention, for which there are likewise no Federal regulations, pointing out that some of these are far more invasive than cell phone use.

The RSAC members present at the meeting unanimously restated that virtually all of them restrict cell phone use in one form or another, but also acknowledge that the use of this, and related devices, allows more effective communication among employees, and that many railroads even provide cell phones to their employees. It was also mentioned that redundant communication devices are now required by Federal regulation (Part 220) and that cell phones are one acceptable example. The consensus of those members present was that it was a complex issue and that they were not yet prepared to consider a Federal regulation in this area. Notwithstanding, while FRA had not yet decided what course of action it would follow, FRA agreed to reexamine current railroad operating rules and instructions on cell phone use and develop from that review what ''best practices'' emerge. FRA would then circulate a ''best practices'' document among RSAC members for comments before forwarding it on to the NTSB.

In a letter to NTSB, dated August 18, 2006, FRA provided the Safety Board with an update on the status of its recommendation R–03–01 with respect to cell phone use in the railroad industry. FRA noted that NTSB had renewed its interest in the use of cell phones by railroad employees as the result of a collision between two BNSF freight trains near Gunter, Texas, on May 19, 2004. NTSB had determined that 25 calls were made by crewmembers from both trains during the trip and up to the time of the collision, and that 22 of those calls were of a personal nature. FRA's update indicated to the Board that it had not yet decided what final course of action it would follow, but that, with the assistance and cooperation of the railroad's operating rules departments, it was still developing a ''best practices'' document. It was subsequently decided to task the RSAC Operating Rules Working Group with developing this document.

At a meeting of the Operating Rules Working Group on September 27–28, 2007, held in Fort Worth, Texas, also attended by a representative of the NTSB, it was discussed and agreed that the railroad industry, with a representative to facilitate the process from the FRA, a ''best practices'' operating rule would be developed, and that if the industry as a whole could adopt and enforce it, that approach would be considered by the Board in lieu of Federal intervention.

At the next meeting of the GCOR Committee, on November 14–15, 2007, also attended by rules officers from NORAC and other major eastern railroads not signatory to the GCOR, and the ASLRRA, and facilitated by a representative from FRA, just such a ''best practices'' operating rule was developed and agreed upon by the GCOR Committee, the ASLRRA, NORAC, and other railroads present.

At a meeting of the Operating Rules Working Group held in Washington, DC, on January 17–18, 2008, a draft of the ''best practices'' operating rule that was developed by the industry, was shared with the Working Group and discussed at length. It was decided at that meeting that while the proposed rule was acceptable, it needed further enhancements. The suggestion was made that FRA develop a Safety Advisory which would contain these additional enhancements, some of which were proposed at the meeting. FRA accepted this task and subsequently developed a proposed Safety Advisory on the use of cell phones and similar wireless communications devices by railroad operating employees.

At a meeting of the Operating Rules Working Group held in Grapevine,

Texas, on May 21–22, 2008, the proposed Safety Advisory on cell phone use was discussed and the document was further refined and enhanced to include many valuable suggestions. A final draft was then prepared for discussion at the next Working Group meeting.

In the meantime, the course of events recited below was developing into the emergency situation FRA now addresses, persuading FRA to change its view of the necessity of immediate action.

At a meeting of the Operating Rules Working Group held in Chicago, Illinois, on September 25–26, 2008, a draft of FRA's proposed Emergency Order on the use of cell phones, and other forms of wireless communication, was discussed and much valuable input received.

Fatal Railroad Accidents During 2008 Involving Cell Phone Use That Are Currently Under Investigation by National Transportation Safety Board, FRA, or Both

(1) The National Transportation Safety Board (NTSB or Safety Board) and the FRA are currently investigating the September 12, 2008 head-on collision between a Southern California Regional Rail Authority (Metrolink) commuter train and a Union Pacific Railroad Company (UP) freight train at Chatsworth, California, which resulted in the deaths of 25 people, the injury of numerous others, and more than $7,100,500 in damages. Although NTSB has not yet determined the probable cause of the accident, preliminary information indicates that the locomotive engineer of the Metrolink commuter train may have passed a stop signal. NTSB stated that a cell phone owned by the locomotive engineer was being used to send a text message within 30 seconds of the time of the accident.

(2) On June 8, 2008, a UP brakeman was struck and killed by the train to which he was assigned. FRA's investigation, which has not yet been completed, indicates that the brakeman instructed the locomotive engineer via radio to back the train up and subsequently walked across the track, into the path of the moving train. Information indicates that the brakeman was talking on his cell phone at the time of the accident.

Train Collisions Between 2000 and 2006 in Which Cell Phone Use Was Involved

(1) *Marshall, Texas.* On July 1, 2006, a northward BNSF Railway Company (BNSF) freight train collided with the rear of a standing BNSF freight train at Marshall, Texas. Although there were no injuries, damages were estimated at $413,194. Both trains had two-person crews. The striking train had passed a ''Stop and Proceed at Restricted Speed'' signal and was moving at 20 mph. FRA determined (1) that the collision was caused by the failure of the locomotive engineer of the striking train to comply with restricted speed and (2) that the locomotive engineer of the striking train was engaged in cell phone conversations immediately prior to the accident.

(2) *San Antonio, Texas.* On May 27, 2006 an eastward UP freight train collided head on with a westward UP freight train at San Antonio, Texas. There were four injuries, and damages were estimated at $401,779. Both trains had two-person crews. FRA determined that the collision was caused by the eastward train locomotive engineer's inattentiveness because he was engaged in a cell phone conversation and by the conductor's failure to supervise safe operations.

(3) *Gunter, Texas.* On May 19, 2004, one locomotive engineer died, and a train conductor suffered serious burns when two BNSF freight trains collided head on near Gunter, Texas. The southbound train was traveling approximately 37 mph and the northbound train was traveling about 40 mph when the collision occurred. The trains were being operated under track warrant control rules on non-signaled single track territory. The collision resulted in the derailment of five locomotives and 28 cars, with damages estimated at $ 2,615,016. Approximately 3,000 gallons of diesel fuel were released from the locomotives, which resulted in a fire.

The General Code of Operating Rules and the BNSF System General Order Number 37 dated March 7, 2004, restricted the use of cell phones and other electronic devices. Cell phones were not to be used by crewmembers while the train or engine was moving. However, cell phone use was allowed while the train or engine was stopped, providing that such use did not interfere with required duties. Safety Board investigators obtained records that showed the number and duration of cell phone calls made by crewmembers on both trains between 1:50 p.m. and the time of the accident. During this time, a total of 25 cell phone calls were made or received by the five crewmembers on both trains while the trains were in motion. Three of these calls were related to railroad business. The southbound engineer made two of the business-related calls, and the northbound conductor made the third.

The southbound engineer's cell phone record showed activity between 3:12 p.m. and 3:16 p.m. This time period coincides with the time that track warrant authority was being received by the conductor on the southbound train. (Track Warrant No. 3583 was made effective at 3:17 p.m.) BNSF track warrant procedures required the receiver (the conductor on the southbound train in this case) to repeat back verbatim certain critical portions of the track warrant. In this instance, the track warrant had to be repeated back to the dispatcher several times before it was considered correct.

Following the 3:17 p.m. effective time on Track Warrant No. 3583, the dispatcher asked the engineer on the southbound train to use his cell phone to call him at the Network Operations Center. The engineer had to call the dispatcher twice because of poor transmission or reception during the first call. The first call to the dispatcher was made at 3:22 p.m., and the second call was made at 4:02 p.m. Both calls were recorded. The dispatcher asked the engineer to provide additional assistance to the conductor in future track warrant communications. Event recorder data indicate that both calls were made while the train was in motion. The conductor on the northbound train's cell phone records showed a call to the BNSF work order reporting line 27 at 5:04 p.m. Event recorder data indicate that the train was in motion at that time. The last cell phone activity for the southbound crew was recorded at 5:31 p.m. The call lasted about 2 minutes while the train was stopped. The last cell phone activity for the northbound crew before the collision was recorded at 5:24 p.m. The call lasted about 3 minutes while the train was moving. A 911 call was originated from the BNSF 6351 northbound brakeman's cell phone at 5:48 p.m; the accident took place at approximately 5:46 p.m.

(4) *Clarendon, Texas.* At 8:57 a.m. on May 28, 2002, an eastbound BNSF coal train collided head on with a westbound BNSF intermodal train near Clarendon, Texas. Both trains had two-member crews, and all crewmembers jumped from their trains before the impact. The conductor and engineer of the coal train received critical injuries. The conductor of the intermodal train received minor injuries; the engineer of the intermodal train was fatally injured. The collision resulted in a fire that damaged or destroyed several of the locomotives and other railroad equipment. The cost of the damages exceeded $8,000,000.

NTSB found that all four crewmembers involved in this accident

had personal cell phones. According to cell phone records obtained by the Safety Board, the conductor of the coal train used his cell phone for brief calls before the train departed Amarillo. The cell phone belonging to the engineer of the coal train was used for two calls during the morning of the accident. At 8:05 a.m., a 23-minute call originated from the engineer's cell phone. After the completion of this call, and after about 16 minutes of non-use, another call originated from the engineer's phone at 8:44 a.m. This time corresponds to the end of the last track warrant, which was given to the coal train at 8:43 a.m. This call, which lasted about 10 minutes, was to the same number as the previous call. The engineer said, and telephone company records confirm, that the number called was that of a family member. The engineer said that he could not recall the substance of the telephone calls that day. He added that he usually called this family member, who was in failing health, each morning. The coal train passed the east end of Ashtola Siding, the location at which it should have waited for the arrival of the intermodal train, at about 8:47 a.m. The engineer said he did not remember specifically being on the phone at the time his train passed the east end of Ashtola Siding.

In its investigation of the Clarendon accident, NTSB found that the use of a cell phone by the engineer of one of the trains may have distracted him to the extent that he was unaware of the dispatcher's instructions that he stop his train at a designated point. NTSB consequently issued recommendation R–03–1 to FRA: ''Promulgate new or amended regulations that will control the use of cell telephones and similar wireless communication devices by railroad operating employees while on duty so that such use does not affect operational safety.''

After the Clarendon accident and as a result of a two additional collisions, BNSF, on June 18, 2002, issued instructions to operating employees that specifically prohibited the use of cell phones and laptop computers while on duty, with certain exceptions. Under these instructions, locomotive engineers are prohibited from using cell phones or laptop computers while operating the controls of a locomotive.

Fatal Train Incidents Between 2000 and 2005 Linked With Cell Phone Usage

(1) *Copeville, Texas.* On December 21, 2005, a contractor working on The Kansas City Southern Railway Company's (KCS) property at Copeville, Texas was struck and killed when he stepped into the path of an approaching freight train. FRA's investigation disclosed that the contractor was talking on a cell phone at the time of the accident. (2) *Gillette, Wyoming.* On December 29, 2000, a BNSF freight train operating on the UP was stopped on a siding at Gillette, Wyoming to allow another train to pass. The conductor of the stopped train exited the leading locomotive and crossed over the track immediately in front of the passing train and was struck and killed. The FRA investigation revealed the strong possibility that the conductor may have been distracted by his cell phone use.

Unsafe Behavior Observed or Otherwise Witnessed by FRA Inspectors

During the course of regular inspection and enforcement activities, FRA railroad safety inspectors have observed railroad employees using cell phones in an unsafe manner, often in contravention of existing railroad rules and instructions. The inspectors took action to prevent an accident from occurring, but did so under FRA's general railroad safety authority, not pursuant to any Federal order, rule, standard or regulation.

The following are examples of the unsafe behavior that FRA inspectors observed and corrected:

- An FRA operating practices specialist observed a locomotive engineer at the controls of a moving passenger train answer a cell phone call from his conductor. The conductor asked the locomotive engineer to order a taxi cab for the crew and the locomotive engineer placed such a call.
- Two FRA operating practices inspectors observed a remote-control locomotive operator walking across the tracks with his head down and talking on a cell phone. The inspectors approached him, and he admitted that the call was not work-related.
- An FRA operating practices inspector observed a locomotive engineer receive a call on a cell phone while operating the train. The engineer answered the call and told the caller he would return his call later. When the inspector questioned the engineer about his actions, the engineer stated that he was a union representative and he needed to be available to his constituents.
- On at least two occasions, an FRA Regional Administrator received telephone calls from locomotive engineers with concerns about safety issues. During the course of the telephone calls, the Regional Administrator heard a train horn and asked the locomotive engineers if they were operating a train. When they replied in the affirmative, the Regional Administrator terminated the telephone calls. An FRA headquarters specialist recently reported having the same experience. On at least two other occasions, FRA field personnel observed remote-control locomotive operators talking on a cell phone while operating the remote control locomotive.
- An FRA Deputy Regional Administrator was conducting an initial pre-employment interview over the telephone with a locomotive engineer who was applying for an FRA operating practices inspector position. The deputy regional administrator heard a train horn in a two long, one short, and one long pattern and asked the candidate if he was operating a locomotive. The candidate replied that he was, and the deputy regional administrator terminated the telephone call. The candidate was not selected.
- An FRA chief inspector observed an engineer on a passenger train use his cell phone to take a call from his conductor who was trying to find out what channel the engineer was working on. The train was operating at 5 mph in yard limits.
- An FRA hazardous materials inspector observed a remote control locomotive operator talking on a cell phone while operating the controls of a remote control locomotive during switching operations.
- A hazardous materials inspector observed a locomotive engineer initiate a phone call to the dispatcher on his personal cell phone for the purpose of copying a track warrant while operating the controls of a locomotive. Additionally, the same engineer was observed initiating a cell phone call to the dispatcher, while at the controls of a moving locomotive, releasing a track warrant, during a shoving move with the conductor on the point of the equipment.
- FRA inspectors report that they frequently observe cell phones or PDAs within reach of locomotive engineers operating trains. If the devices ring, the locomotive engineers rarely answer in the presence of the FRA inspector, but the circumstances lead a responsible person to conclude that they would answer if the FRA inspector were not present.
- On at least two occasions, FRA personnel have observed railroad employees on locomotives watching digital video disc (DVD) players.
- Three days after the head-on collision in Chatsworth, an FRA operating practices observed a commuter rail engineer on another railroad answer a cell phone while awaiting a signal to depart the initial passenger station for his trip. The

locomotive engineer answered the phone after the FRA inspector had identified himself.

The incidents noted above occurred in various parts of the country, and involved both freight and passenger trains.

Scientific Research on Cell Phones as a Distraction[1]

Motor Vehicle Operation

There is considerable scientific evidence that cell phone use, both for oral conversation and for text messaging, increases the risk of highway accidents as a result of driver distraction (Brown and Poulton, 1961; Burns, Parkes, Burton, Smith and Burch, 2002; McCartt, Hellinga, and Braitman, 2006; Parkes, Luke, Burns and Lansdown, 2007; Ranney, 2008; Reid and Robbins, 2008). ''Driver distraction'' is defined by the Australian Road Safety Board (Trezise, Stoney, Bishop, Eren, Harkness, Langdon, and Mulder, 2006) as follows:

> Driver distraction is the voluntary or involuntary diversion of attention from the primary driving tasks not related to impairment (from alcohol, drugs, fatigue, or a medical condition) where the diversion occurs because the driver is performing an additional task (or tasks) and temporarily focusing on an object, event, or person not related to the primary driving tasks. The diversion reduces a driver's situational awareness, decision making, and/or performance resulting, in some instances, in a collision or near-miss or corrective action by the driver and/or other road user.

Use of cell phones (voice communication) while driving increases reaction times, causes failures to detect hazards, and to have more variability in lane position. A driver's use of cell phones up to 10 minutes before a crash, or at the time of a collision, was found to be associated with a fourfold increased likelihood of being involved in a crash (McCartt *et al.*, 2006; McEvoy, Stevenson, McCartt, Woodward, Haworth, Palamara, and Cercarelli 2005).

Text messaging has similar effects on driving performance. For instance, Hosking, Young, and Regan (2006) found that text messaging caused a 400-percent increase in time looking away from the road as compared to driving without text messaging. Reed and Robbins (2008) found increased reaction times, failures to detect hazards, and large increases in lane position variability. The increased reaction times observed were greater than that caused by alcohol consumption (to legal limit) and cannabis. They concluded that increased mental workload, loss of motor control caused by holding the phone, and constant shifting of visual gaze resulted in significantly impaired ability to maintain a safe road position while text messaging.

These research studies are bolstered by two highway accident investigations conducted by NTSB (NTSB, 2003b, 2007). In 2002, a Ford Explorer Sport landed on top of a Ford Windstar minivan that was subsequently hit by a Jeep Cherokee (see NTSB, 2003b). The accident resulted in five fatalities. NTSB determined that the probable cause of the collision was ''the Explorer driver's failure to maintain directional control of her high-profile, short-wheel base vehicle in the windy conditions due to a combination of inexperience, unfamiliarity with the vehicle, speed, and *distraction caused by the use of handheld wireless telephone.*'' (Emphasis added to original text. NTSB, 2003b, p. 62). In 2004, the driver of a motorcoach on the George Washington Memorial Parkway collided with the side and underside of an overpass while talking on a hands-free cell telephone (see NTSB, 2007). NTSB determined that the probable cause of this collision ''was the bus driver's failure to notice and respond to posted low-clearance warning signs and to the bridge itself due to cognitive distraction resulting from conversing on a hands-free cellular telephone while driving.'' (NTSB, 2007, p. 33). It should be noted that the research studies cite increased variability in lane position, which corresponds to the failure to maintain directional control of the vehicle in the 2002 accident, and failures to detect hazards, which corresponds to the bus driver's lack of response to the low-clearance warnings.

Train Operations

While there are no research studies of locomotive engineer distraction and safety performance, we can easily draw parallels between operating a motor vehicle and operating a train. Failures to detect hazards in either operating environment would result from the increase in heads-down time, constant shift of visual gaze and increased mental workload. In the railroad environment, this could result in the failure to detect signals, whistle boards, rear end marking devices, broken rails and other conditions that could cause derailments or collisions. The increased mental workload and heads-down time could also degrade situation awareness and result in speeding, excessive braking, missed radio communications, and poor train handling.

A railroad accident report by NTSB (2003a) confirms the parallels noted above. As noted above, in 2002, two freight trains had a head-on collision near Clarendon, Texas. NTSB determined that the probable cause of this accident was ''the coal train engineer's use of a cell phone during the time he should have been attending to the requirements of the track warrant his train was operating under.'' (NTSB, 2003a, p. 28). NTSB's findings noted that the cell phone use probably distracted the engineer and caused him not to take note of an after-arrival stipulation in the track warrant that required him to prepare his train to stop. Again, this is a failure to detect a hazard.

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[1] References for this section: Brown, I.D., and Poulton, E.C. (1961). Measuring the spare mental capacity of car drivers by a subsidiary task. *Ergonomics, 4,* 35–40.

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Findings and Order

Based on the evidence recited above, I find that railroad operating employees are increasingly using cell phones and other electronic and electrical devices during railroad operations, in violation of railroad operating rules, in a manner and to an extent that these practices constitute an emergency situation involving a hazard of death or personal injury because use of these devices distracts the users' attention from safety-critical duties. These obviously unsafe practices reflect the powerful influence of pervasive private use of cell phones and other electronic and electrical devices; powerful intervention, in the form of this Emergency Order, is necessary to counteract that influence and to eliminate this source of extremely dangerous distraction in the railroad operating environment. I find that the unsafe conditions previously discussed create an emergency situation involving a hazard of death or personal injury. Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is hereby ordered that, on and after October 27, 2008, the prohibitions and restrictions described below shall be observed by railroad operating employees and railroads.

(a) *Scope.* This order sets forth prohibitions and restrictions that apply to railroad operating employees' use of mobile telephones (commonly called cell telephones or cell phones), other electronic devices or electrical devices, and other portable electronic devices (such as portable digital video disc (DVD) players, radio receivers, and audio players) capable of distracting a railroad operating employee from a safety-critical duty (by railroad operating employees either while in the cab of a moving locomotive, while working on the ground in proximity to a live track) or while another employee of the railroad is assisting in preparation of the train (*e.g.*, during an air brake test). This order does not restrict use of the railroad radio nor does it affect the use of working wireless communications under 49 CFR Part 220.

(b) *Definitions.* In this order—

(1) *Fouling a track* means the placement of an individual in such proximity to a track that the individual could be struck by a moving train or other on-track equipment, or in any case is within four feet of the nearest rail.

(2) *Personal electronic or electrical device* means an electronic or electrical device that was not provided to the railroad operating employee by the employing railroad for one or more business purposes.

(3) *Railroad operating employee* means a person performing duties subject to 49 U.S.C. 21103, ''Limitation on duty hours of train employees,'' an individual engaged in or connected with the movement of a train, including a hostler.

(4) *Railroad-supplied electronic or electrical device* means an electronic or electrical device provided to a railroad operating employee by the employing railroad for one or more business purposes.

(5) *Switching operation* means the classification of freight cars according to commodity or destination; assembling of cars for train movements, changing the position of cars for purposes of loading, unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.

(6) *Train* means (i) a single locomotive, (ii) multiple locomotives coupled together, or (iii) one or more locomotives coupled with one or more cars.

(7) *Use of an electronic or electrical device* means use of a mobile telephone or another electronic or electrical device to conduct an oral communication; place or receive a telephone call; send or read an electronic mail message or text message; play a game; navigate the Internet; play, view, or listen to a video; play, view, or listen to a television broadcast; play or listen to a radio broadcast other than a radio broadcast by a railroad; play or listen to music; to execute a computational function, or to perform any other function that is not necessary for the health or safety of the person and that entails the risk of distracting the employee from a safety-critical task. An electronic or electrical device that enhances the individual's physical ability to perform these tasks, such as a hearing aid, is not covered by this order.

(8) *Wireless communication device* means an electronic device capable of communicating remotely. Examples include cell phones, personal digital assistants (PDAs) and portable computers (commonly called laptop computers). References to use of a wireless communication device include oral conversations, text messaging, electronic mail, and transmission or receipt of a file and one or more media.

(c) *Personal electronic and electrical devices.* (1) Each personal electronic or electrical device must be turned off with any earpieces removed from the ear while on a moving train, except that, when radio failure occurs, a wireless communication device may be used in accordance with railroad rules and instructions.

(2) Each personal electronic or electrical device must be turned off with any earpieces removed from the ear when a duty requires any railroad operating employee to be on the ground or to ride rolling equipment during a switching operation and during any period when another employee of the railroad is assisting in preparation of the train (*e.g.*, during an air brake test).

(3) Use of a personal electronic or electrical device to perform any function other than voice communication while on duty is prohibited. In no instance may a personal electronic or electrical device interfere with the railroad operating employee's performance of safety-related duties.

(d) *Railroad-supplied electronic and electrical devices.* (1) The use of a railroad-supplied electronic or electrical device by a locomotive engineer (including a remote-control locomotive operator) is prohibited while on a moving train, or when a duty requires any member of the crew to be on the ground or to ride rolling equipment during a switching operation, or during any period when another employee of the railroad is assisting in preparation of the train (*e.g.*, during an air brake test).

(2) A railroad operating employee other than a locomotive engineer operating the controls of a moving train may use a railroad-supplied mobile telephone or remote computing device in the cab of a moving locomotive for an authorized business purpose, after a safety briefing, provided that all assigned personnel on the crew agree that it is safe to do so. Any other use is prohibited in the cab.

(3) A railroad operating employee may use a railroad-supplied electronic or electrical device for an approved business purpose while on duty within the body of a passenger train or railroad business car. Use of the device shall not excuse the individual using the device from the responsibility to call or acknowledge any signal, inspect any passing train, or perform any other safety-sensitive duty assigned under the railroad's operating rules and special instructions.

(4) For freight train crewmembers, a railroad operating employee may not use a railroad-supplied electronic or electrical device for an approved business purpose while on duty outside the cab unless the following conditions are met: (1) The employee is not fouling a track; (2) no switching operation is underway; (3) no other safety duties are presently required; and (4) all members

of the crew have been briefed that operations are suspended.

(e) *Operational testing.* (1) The railroad's program of operational tests and inspections under 49 CFR Part 217 shall be revised as necessary to include the requirements of this order and shall specifically include a minimum number of operational tests and inspections, subject to adjustment as appropriate.

(2) When conducting tests and inspections under 49 CFR Part 217, a railroad officer, manager or supervisor is prohibited from calling the personal electronic or electrical device or the railroad-supplied electronic or electrical device used by a locomotive engineer while the train to which the locomotive engineer is assigned is moving.

(3) When an operational test involves stopping a train, interrupting a switching operation, or interrupting an activity involving other employees of the railroad (*e.g.*, through use of a banner, signal, or radio communication), the limitations set forth in this order regarding use of electronic and electrical devices shall continue to be in effect even though the train movement, switching operation, or other activity is temporarily suspended.

(f) *Exceptions.* Notwithstanding any other provision of this order—

(1) A railroad operating employee may use the digital storage and display function of a personal or railroad-supplied electronic device to refer to a railroad rule, special instruction, timetable or other directive, if such use is authorized under a railroad operating rule or instruction;

(2) Railroad operating employees may use a personal or railroad-supplied wireless communication device as necessary to respond to an emergency situation involving the operation of the railroad or encountered while performing a duty for the railroad;

(3) A locomotive engineer (including a remote-control locomotive operator) may use electronic control systems and informational displays presented to the locomotive engineer within the locomotive cab or on a remote control transmitter to operate a train or conduct a switching operation, including functions associated with controlling switches;

(4) Under conditions authorized under 49 CFR Part 220, a railroad operating employee may use a railroad-supplied or railroad-authorized working wireless communication device, in lieu of the railroad radio, to conduct train or switching operations;

(5) A railroad employee may refer to a digital timepiece to ascertain the time of day or to verify the accuracy of speed indicators.

(g) *Training.* Each railroad shall instruct each of its railroad operating employees and supervisors of railroad operating employees concerning the requirements of this order and implementing railroad rules and instructions. Such instruction shall be sufficient to ensure that the requirements of this order are understood, including any relevant distinctions between the minimum requirements of this rule and any more stringent requirements implemented by the railroad.

(h) *Sanctions.* (1) Any individual who willfully violates a prohibition stated in this order or uses any of the described devices without observing any of the restrictions stated in this order is subject to civil penalties under 49 U.S.C. 21301.

(2) In addition, such an individual whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under 49 U.S.C. 20111.

(3) A railroad that violates this order may be subject to civil penalties under 49 U.S.C. 21301.

(4) FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Relief

A railroad may obtain relief from this order by adopting other means of ensuring that railroad operating employees are not distracted from their duties by use of electronic or electrical devices or by implementing technology that will prevent inappropriate acts and omissions from resulting in injury to persons. Such relief may be obtained by petition to the FRA Associate Administrator for Safety establishing that the alternative means provide equivalent safety.

FRA anticipates that it will utilize the existing Railroad Safety Committee Operating Practices Working Group in the formulation of an amendment to 49 CFR Part 220 to address comprehensively the safety implications of the use of electronic devices by railroad employees. Until that is accomplished, this emergency order is necessary to reduce the likelihood of additional accidents caused by the unsafe use of electronic devices.

Effective Date and Notice To Affected Persons

On and after October 27, 2008, the prohibitions and restrictions described above shall be observed by railroads and railroad operating employees. Notice of this Emergency Order will be provided by publishing it in the **Federal Register**.

Review

Opportunity for formal review of this emergency order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC, on October 1, 2008.

Joseph H. Boardman,

Administrator.

[FR Doc. E8–23755 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket: RITA 2008–0002 BTS Paperwork Reduction Notice]

Agency Information Collection; Bureau of Transportation Statistics; Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring U.S. large certificated air carriers to submit two true and complete copies of its annual audit that is made by an independent public accountant. If a carrier does not have an annual audit, the carrier must file a statement that no audit has been performed. Comments are requested concerning whether (1) The audit reports are needed by BTS and DOT; (2) BTS accurately estimated the reporting burden; (3) there are other ways to enhance the quality, utility and clarity of the information collected; and (4) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by December 8, 2008.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA 2008–0002 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: Identify docket number, BTS 2008–0002, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov*. All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

An electronic copy of this rule, a copy of the notice of proposed rulemaking, and copies of the comments may be downloaded at *http://www.regulations.gov*, by searching docket RITA 2008–0002.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Bureau of Transportation Statistics, 1200 New Jersey Avenue Street, SE., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0004.

Title: Submission of Audit Reports—Part 248.

Form No.: None.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 77.

Number of Responses: 77.

Total Annual Burden: 20 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) A means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases, (3) reference material used by analysts in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC on October 1, 2008.

M. Clay Moritz, Jr.,

Acting Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E8–23731 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket: RITA 2008–0002 BTS Paperwork Reduction Notice]

Agency Information Collection; Bureau of Transportation Statistics; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether (1) the supplemental reports are needed by BTS to fulfill the United States treaty obligation of furnishing financial and traffic reports to ICAO; (2) BTS accurately estimated the reporting burden; (3) there are other ways to enhance the quality, utility and clarity of the information collected; and (4) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by December 8, 2008.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA 2008–0002 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

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Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

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FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Bureau of Transportation Statistics, 1200 New Jersey Avenue Street, SE., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 40.

Number of Responses: 40.

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on October 1, 2008.

M. Clay Moritz, Jr.,

Acting Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E8–23793 Filed 10–6–08; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–491 (Sub-No. 2X)]

R.J. Corman Railroad Company/ Pennsylvania Lines, Inc.—Abandonment Exemption—in Clearfield, Jefferson, and Indiana Counties, PA

R.J. Corman Railroad Company/ Pennsylvania Lines, Inc. (RJCP), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 7-mile segment of a line of railroad known as the Hillman Branch, extending from milepost 0 near McGees to the end of the line at milepost 7 near Hillman, in Clearfield, Jefferson, and Indiana Counties, PA. The line traverses United States Postal Service Zip Codes 15757, 15742, and 15767.

RJCP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic that has to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 6, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 17, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to RJCP's representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RJCP has filed a combined environmental and historic report, which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 10, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RJCP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RJCP's filing of a notice of consummation by October 7, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: September 30, 2008.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update,* STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–23416 Filed 10–6–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35164]

BNSF Railway Company—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by BNSF Railway Company (BNSF) on July 15, 2008, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e) to determine whether what BNSF characterizes as two track relocation projects in Oklahoma City, OK, are subject to the Board's jurisdiction and require prior Board approval. One reply in opposition to the petition and three letters in support of the petition have been filed. The Board seeks public comments on this matter.

DATES: Supplemental evidence from BNSF is due by October 17, 2008. Replies are due by November 6, 2008.

ADDRESSES: Send an original and 10 copies of any comments, referring to STB Finance Docket No. 35164, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, send one copy of comments to BNSF's representative, Kristy Clark, 2500 Lou Menk Drive, Fort Worth, TX 76131–2828, and one copy to Edwin Kessler, 1510 Rosemont Drive, Norman, OK 73072.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: BNSF's petition for declaratory order concerns what it now characterizes as a project to relocate two track segments of its Chickasha Subdivision between milepost 541.69 and milepost 539.96 to facilitate the Oklahoma City I–40 Crosstown Relocation project.[1] Petitioner states that these two track segments must be relocated to make way for this major highway project. BNSF states that the segment of the Chickasha Subdivision between milepost 540.15 and milepost 541.69 (referred to as the middle segment) would be relocated by rerouting traffic over BNSF's Packingtown Lead, which will have the same throughput capacity and operating speeds as the Chickasha Subdivision line. BNSF states that the portion of the Chickasha Subdivision between milepost 540.15 and milepost 539.96 (referred to as the eastern segment) would be relocated to the south.[2] BNSF adds that a contractor for the Oklahoma Department of Transportation (ODOT) is constructing: (1) A new railroad bridge to elevate BNSF's Red Rock Subdivision where it crosses the Chickasha Subdivision and where the new highway will be located, and (2) new industry tracks to connect the two shippers located adjacent to the eastern segment (Producers Cooperative Oil Mill (Producers) and Mid-States Wholesale Lumber (Mid-States)) directly to BNSF's Red Rock Subdivision north of the Chickasha Subdivision.

BNSF argues that neither of these relocation projects will affect service to shippers or involve an extension into or an invasion of new territory, and that these projects are therefore outside of the Board's jurisdiction, citing among other authorities *Missouri Pac. R. Co. Trustee Construction*, 282 I.C.C. 388 (1952); and *City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC*, 59 F.3d 1314 (D.C. Cir. 1995). BNSF requests expedited processing of this proceeding to allow the highway project to move forward.

On August 4, 2008, ODOT submitted into the record a letter expressing support for an expedited declaratory ruling in favor of BNSF. ODOT also attached letters of support from Mick Cornett, Mayor of Oklahoma City, and the Greater Oklahoma City Chamber.

On August 5, 2008, Edwin Kessler filed a reply to BNSF's petition and a request for a procedural schedule, including a public hearing in Oklahoma City, OK.[3] Mr. Kessler argues that BNSF has failed to demonstrate that its proposed actions would be mere relocations of track. Rather, Mr. Kessler argues that the relocation of these segments will deprive some shippers of service, particularly Boardman, Inc. (Boardman), and will allow BNSF to serve new markets. Mr. Kessler argues that BNSF needs Board authorization to: (1) Construct the new tracks and (2) remove the two crossing diamonds on the eastern segment that enable it to reach two other shippers (Producers Co-Op Oil Mill and Mid-States Lumber Company).

On August 25, 2008, BNSF filed a response to Mr. Kessler's arguments in which it challenged several of Mr. Kessler's factual assertions.[4] BNSF also renewed its request for expedited Board handling of this matter.

On September 5, 2008, Mr. Kessler filed a reply to BNSF's August 25, 2008 response and also filed a separate document labeled ''Motion to Compel'' and ''Motion to Cease and Desist'' asking that the Board compel BNSF to undertake certain actions. In these motions, Mr. Kessler alleges that, in late July 2008, a railroad car carrying his locomotive was delivered to BNSF for transport to Boardman's facility, but that after reaching Oklahoma City some 19 days later, the car ultimately could not be delivered because the tracks leading to Boardman's facility had been removed. Mr. Kessler provided no verified statement to support these allegations.

On September 24, 2008, BNSF moved the Board to strike Mr. Kessler's September 5 pleading because it is an impermissible reply to a reply, is not properly verified, and involves matters that are either premature or outside the scope of this proceeding. BNSF also calls Mr. Kessler's locomotive shipment a ''fraudulent ploy,'' which BNSF is investigating.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. BNSF asserts that no Board jurisdiction is implicated here, while Mr. Kessler argues that these projects are in fact subject to the Board's jurisdiction, as they would remove service to existing shippers and would allow BNSF to extend service into new territory. A

[1] These track segments were previously the subject of a notice of exemption in *BNSF Railway Company—Abandonment Exemption—In Oklahoma County, OK*, STB Docket No. AB–6 (Sub-No. 430X), that was rejected in a Board decision served June 5, 2008.

[2] BNSF states that it plans to file an individual exemption request or an application to abandon the western segment—the portion of the Chickasha Subdivision between milepost 541.69 and milepost 542.91—in the future. Therefore, the western segment is not at issue here.

[3] The public hearing request will be denied. The Board believes that the record can be developed and the issues resolved on the basis of written submissions.

[4] In that document, BNSF also withdrew an earlier request that the Board rule that the United States District Court for the Western District of Oklahoma was without jurisdiction to enjoin the two relocation projects. On August 14, 2008, the District Court issued an order granting BNSF's motion to dismiss Kessler's petition to enjoin BNSF for lack of jurisdiction. *Edwin Kessler* v. *BNSF Railway Company and Oklahoma Department of Transportation*, Case No. CIV–08–358–R (W.D. Okla. 2008).

declaratory order proceeding will be instituted in this proceeding to address these issues. To facilitate BNSF's request for expedition, BNSF will be permitted to supplement its petition by October 17, 2008. Any person seeking to reply in support of, or in opposition to, BNSF's position may submit written comments to the Board by November 6, 2008. Because there is already a substantial record in this proceeding, the parties are directed to focus their comments on the issue of whether these two planned projects are merely track relocations not requiring Board authorization or whether they would remove service to shippers and/or extend BNSF's operations into new territory. Both the continued ability to serve Boardman and any specific new territory that could be served should be identified and addressed. Additionally, concerning service to shippers on the eastern segment, BNSF is specifically directed to submit a statement from ODOT confirming that its contractor is obligated to construct both a new railroad bridge to elevate the Red Rock Subdivision over the planned location of the new highway and new industry tracks to connect Producers and Mid-States directly to the Red Rock Subdivision.

In the meantime, Mr. Kessler has not shown that his requests for injunctive relief should be entertained in this declaratory order proceeding. Mr. Kessler says that, with the request for a locomotive shipment, Boardman was ''testing'' BNSF's ability to serve Boardman.[5] But Boardman is not before us complaining that a locomotive was not delivered, or that BNSF has failed to meet any reasonable request for service. Indeed, according to BNSF, Boardman refused delivery of the shipment by transload, explaining that the car was ordered for political reasons. The Board will not order injunctive relief where the supposedly aggrieved shipper does not even appear before the agency, and certainly will not do so where, as here, the moving party has not provided any verified evidence. Any party aggrieved by a service failure may file a complaint and seek appropriate relief. Finally, because BNSF has had an opportunity to respond to Mr. Kessler's September 5 pleading, the Board will not strike it.

Board decisions, notices, and filings in this and other Board proceedings are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 1, 2008.

[5] Kessler's Reply to BNSF's Amendment to Petition at 11.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–23616 Filed 10–6–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Literacy

AGENCY: Office of Financial Education, Treasury.

ACTION: Notice of meeting; amendment.

SUMMARY: The President's Advisory Council on Financial Literacy will convene its fifth meeting on Tuesday, October 14, 2008, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 2 p.m. Eastern Time. The meeting will be open to the public. This notice amends a meeting announcement published on Tuesday, September 30, 2008.

DATES: The meeting will be held on Tuesday, October 14, 2008, at 2 p.m. Eastern Time.

ADDRESSES: The President's Advisory Council on Financial Literacy will convene its fifth meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC.

SUBMISSION OF WRITTEN COMMENTS: The public is invited to submit written statements with the President's Advisory Council on Financial Literacy by any one of the following methods:

Electronic Statements

E-mail *FinancialLiteracyCouncil@do.treas.gov;* or

Paper Statements

Send paper statements in triplicate to President's Advisory Council on Financial Literacy, Office of Financial Education, Room 1332, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treasury.gov/offices/domestic-finance/financial-institution/fin-education/council/index.shtml*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will make such statements available for public inspection and copying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Edwin Bodensiek, Director of Outreach, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at *ed.bodensiek@do.treas.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Advisory Council, has ordered publication of this notice that the President's Advisory Council on Financial Literacy will convene its fifth meeting on Tuesday, October 14, 2008, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 2 p.m. Eastern Time. Due to exceptional circumstances at the U.S. Department of the Treasury at this time concerning the economy, this Notice is being published with less than the required 15 days' notice. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Financial Education at 202–622–1783 or *FinancialLiteracyCouncil@do.treas.gov* by 5 p.m. Eastern Time on Friday, October 10, 2008, to inform the Department of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. To enter the building, attendees should e-mail the Department their full name, date of birth, social security number, organization, and country of citizenship. The purpose of this meeting is for the President's Advisory Council on Financial Literacy to discuss new agenda items, update the President's Advisory Council on Financial Literacy on the work of the committees and follow up on issues from previous meetings.

Dated: September 26, 2008.

Taiya Smith,

Executive Secretary, Treasury Department.

[FR Doc. E8–23650 Filed 10–6–08; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Brierfield Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570, 2008 Revision, published July 1, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: Brierfield Insurance Company (NAIC # 10993).

Business Address: 6300 University Parkway, Sarasota, FL 34240.

Phone: (800) 226–3224. UNDERWRITING LIMITATION b/: $386,000. SURETY LICENSES c/: AL, AR, MS, TN. INCORPORATED IN: Mississippi.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2008 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1 in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 29, 2008.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E8–23593 Filed 10–6–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–129243–07]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing NPRM regulation, 129243–07, Tax Return Preparer Penalties under Sections 6694 & 6695.

DATES: Written comments should be received on or before December 8, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Carolyn N. Brown, (202) 622–6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Tax Return Preparer Penalties under Sections 6694 & 6695 (NPRM).

OMB Number: 1545–1231.

Regulation Project Number: REG–129243–07 (NPRM).

Abstract: This proposed regulation would implement the amendments to tax return preparer penalties under sections 6060, 6107, and 6694 of the Internal Revenue Code enacted by section 8246 of the Small Business and Work Opportunity Tax Act of 2007. This information is necessary to require recording of the name, taxpayer identification number, and principal place of work of each employed tax return preparer consistent with Code section 6060, require each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue or his delegate consistent with Code section 6107, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under Code section 6694.

Current Actions: The final regulation IA–38–90 (T.D. 8382) Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund was superseded by Regulation 129243–07 Tax Return Preparer Penalties Under Sections 6694 & 6695 (NPRM).

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 684,268.

Estimated Time per Respondent: 15 hours, 36 min.

Estimated Total Annual Burden Hours: 10,679,320 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–23648 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc IRS Forms and Publications/Language Services Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Ad Hoc IRS Forms and Publications/ Language Services Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 4, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc IRS Forms and Publications/Language Services Issue Committee of the Taxpayer Advocacy Panel will be held Tuesday, November 4, 2008, at 2 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7977, or you can post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23635 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, November 18, 2008, at 9 a.m., Eastern Time via a telephone conference call. For more information or to confirm attendance, notification if intent to attend the meeting must be made with Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085. If you would like to have the TAP consider a written statement, please write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or you can post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23630 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 19, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, November 19, 2008, at 2:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23625 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, November 17, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday November 17, 2008, at 12:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23624 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, November 18, 2008, at 1 p.m., Central Time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org*. Please contact Patricia Robb at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23629 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, November 10, 2008, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org*. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23631 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 4, 2008.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, November 4, 2008, from 1 p.m. Pacific Time to 2:30 p.m. Pacific Time, via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096, or you can contact us at *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23632 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 19, 2008.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, November 19, 2008, at 2 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Miss Spinks can be reached at 1–888–912–1227 or 206–220–6096, or you can contact us at *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23633 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Wednesday, October 29, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Rm. 7559, 1111 Constitution Avenue, NW., Washington, DC 20224. *Telephone:* 202–927–3641 (not a toll-free number). *E-mail address: *public_liaison@irs.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Wednesday, October 29, 2008 from 9 a.m. to 12 p.m. in The Mint Building, 2nd Floor, Room A & B, 801 9th Street, NW., Washington, DC. Issues that may be discussed include: Income reported from interest in a foreign partnership, resolicitation of taxpayer identification numbers, procedures for second B Notice, nonqualified deferred compensation benefits, Form W–9 instructions, Form 944 reporting, Form 941X, Form 2678 and Schedule R, backup withholding for missing and incorrect name/TINs, cancellation of debt reporting, Forms 5498, 5498–ESA and 5498–SA, 63C letter, income withholding for Non-Resident Aliens, Form 990, reportable transaction disclosure statement, Barter exchange backup withholding, non resident alien scholars, entities not subject to income tax, IRA disaster relief reporting guidance, reporting instructions for IRA distributions, HSAs, rollovers of required minimum distributions, reporting requirements of IRA Beneficiary of a Beneficiary, Filing Information Returns Electronically (FIRE), TIN masking, Office of Professional Responsibility: Offer to consent letter, hypothetical situations, warning letter, IRM penalty grid, administrative law judges, Circular 230 section 10.38, and Enrolled Agent decline. Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, please call or email Caryl Grant to confirm your attendance. Ms. Grant can be reached at 202–927–3641 or *public_liaison@irs.gov*. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Should you wish the IRPAC to consider a written statement, please call 202–927–3641, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:SRM, CP6 4–39, 1111 Constitution Avenue, NW., Washington, DC 20224 or e-mail: *public_liaison@irs.gov.*

Dated: October 1, 2008.

Mark Kirbabas,

Branch Chief, National Public Liaison.

[FR Doc. E8–23655 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, November 5, 2008, at 2 p.m. Eastern Time via a conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 231–2360, or write Patricia Robb, TAP Office, MS–1006–MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to (414) 231–2363, or you can contact us at *http://www.improveirs.org*. For information to join the Joint Committee meeting, contact Patricia Robb at the above number.

The agenda will include the following: discussion of issues and responses brought to the Joint Committee, office report, and discussion of annual meeting.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23634 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed—Taxpayer Burden Reduction Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 13, 2008.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or (718) 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Small Business/Self Employed—Taxpayer Burden Reduction Issue Committee will be held Thursday, November 13, 2008, at 2 p.m. Eastern Time via a telephone conference call. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY, 11201, or you can contact us at *http://www.improveirs.org*. Public comments will also be welcome during the meeting. Please contact Marisa Knispel at 1–888–912–1227 or (718) 488–3557 for additional information.

The agenda will include the following: Various IRS Issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23642 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 12, 2008.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, November 12, 2008, from 1 to 2 p.m. Eastern Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085. Send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23638 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 12, 2008.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or (718) 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Wednesday, November 12, 2008, at 2 p.m. Eastern Time via a telephone conference call. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY, 11201, or you can contact us at *http://www.improveirs.org*. Public comments will also be welcome during the meeting. Please contact Marisa Knispel at 1–888–912–1227 or (718) 488–3557 for additional information.

The agenda will include the following: Various VITA Issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23641 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 25, 2008.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, November 25, 2008, from 9 a.m. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If

you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23659 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 19, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, November 19, 2008, at 12:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: September 26, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–23640 Filed 10–6–08; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
October 7, 2008

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 41 and 141

Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 41 and 141

[Docket No. RM08–5–000; Order No. 715]

Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees

Issued September 19, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: This Final Rule amends the Federal Energy Regulatory Commission's reporting requirements for public utilities and licensees to file financial forms, reports, and statements, including FERC Form No. 1, FERC Form No. 1–F, and FERC Form No. 3–Q. These changes will improve the forms, reports and statements to provide, in fuller detail, the information the Commission needs to carry out its responsibilities under the Federal Power Act to ensure that rates remain just and reasonable. In addition, the changes will help provide public utility customers, state commissions, and the public information to assess the justness and reasonableness of electric rates.

DATES: *Effective Date:* This rule will become effective January 1, 2009.

FOR FURTHER INFORMATION CONTACT: David Lengenfelder (Technical Information), Forms Administration and Data Branch, Division of Financial Regulation, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–8351, *e-mail: david.lengenfelder@ferc.gov,* Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–8744, *e-mail: richard.wartchow@ferc.gov*.

SUPPLEMENTARY INFORMATION:

FINAL RULE

I. Introduction

1. This Final Rule amends the Federal Energy Regulatory Commission's (Commission) reporting requirements for public utilities [1] and licensees to file financial forms, reports, and statements, including FERC Form No. 1 (Form 1), FERC Form No. 1–F (Form 1–F), and FERC Form No. 3–Q (Form 3–Q). These changes will improve the forms, reports and statements to provide, in fuller detail, the information the Commission needs to carry out its responsibilities under the Federal Power Act (FPA) to ensure that rates remain just and reasonable. In addition, the changes will help provide public utility customers, state commissions, and the public the information they need to assess the justness and reasonableness of electric rates.

2. This Final Rule complements the Commission's recent revisions to the reporting requirements for natural gas

[1] While 18 CFR 141.1 nominally refers to ''electric utilities,'' this regulation in fact applies to ''public utilities.'' *See* 16 U.S.C. 824; *accord* 18 CFR Part 101, Definitions 29 and 40. The reference in 18 CFR 141.1 to ''electric utilities'' predates the 1978 addition of separate statutorily defined ''electric utilities,'' see 16 U.S.C. 796(22), when the only utilities that were Commission regulated under the Federal Power Act were the statutorily-defined public utilities, *see* 16 U.S.C. 824. *See, e.g.*, 18 CFR 141.1 (1977).

companies; [2] it revises the financial forms filed by public utilities and licensees—specifically, Form 1, Annual report for major electric utilities, licensees, and others; Form 1–F, Annual report for nonmajor public utilities, licensees and others; and Form 3–Q, Quarterly report of electric utilities, licensees, and natural gas companies.

3. Specifically, the Final Rule adopts revised reporting requirements which will enhance the Commission's and customers' review of formula rates; permit better understanding of non-power goods and services transactions with affiliates, and provide additional detail of revenues not previously specified in Form 1. In addition, the Final Rule will expedite reporting by clarifying Form 1 instructions and cross-references and making certain technical improvements in the form. Finally, the Final Rule responds to the burdens faced by filers by adopting minimum reporting thresholds for certain accounting data, eliminating the reporting requirement for certain utilities that are not otherwise subject to this Commission's reporting obligations or jurisdiction, and accommodating filers whose fiscal year does not fall in the calendar year that is used for reporting purposes.

4. This Final Rule does not convert the submission of Form 1 and other data into a FPA section 205 [3] rate case filing or a cost-and-revenue study, but is instead intended to better ensure a ready source of data to assist the Commission and interested parties in evaluating the justness and reasonableness of a utility's rates. The revised forms do not limit or change an entity's rights or obligations under the FPA and our regulations, and this Final Rule is not intended to change our obligation to rule on complaints, petitions, or other requests for relief based on a full record and substantial evidence.

5. The proposed effective date for implementation of these changes is calendar year 2009. Accordingly, companies subject to the new requirements would file their new Form 3–Qs following the first calendar quarter of 2009 and their new Forms 1 and 1–F in April 2010 for calendar year 2009. In addition, this Final Rule eliminates the filing requirement for utilities not subject to the Commission's jurisdiction under section 201 of the FPA [4] but required to file Form 1 solely because they met the reporting threshold in the regulations.

II. Background

6. Under the Commission's regulations, entities classified as major electric utilities are required to file Form 1. Entities classified as nonmajor electric utilities are required to file Form 1–F.[5] Sections 304, 307 and 309 of the FPA authorize the Commission to collect such data.[6] Form 1, in particular, requires information to be filed on an annual basis by public utilities (and certain hydroelectric production sources) under the Commission's jurisdiction. Form 1 collects corporate information, summary financial information and balance sheet and income information, as well as electric plant, sales, operating and statistical data. Since its inception, Form 1 has been amended by the Commission on numerous occasions to address and keep pace with the transformation of the utility industry.

7. In 1990, the Commission issued Order No. 529, which modified Form 1 to improve reporting of bulk power transactions.[7] In 1993, the Commission issued Order No. 552, which revised the Uniform System of Accounts (USofA) to account for allowances under the 1990 Clean Air Act Amendments, and adopted corresponding reporting schedules for Forms 1 and 1–F.[8]

8. In 1994, the Commission issued Order No. 574, which required the filing of an electronic version of Form 1, along with the paper version. The electronic version was prepared pursuant to a computer program supplied by the Commission.[9] In 2002, the Commission issued Order No. 626, which eliminated the paper filing requirement, relying solely on electronic filing of Form 1.[10] Also in 2002, the Commission expanded USofA accounting requirements to include monitoring for the fair value of certain security investments, derivative instruments, and hedging activities, and added new schedules and accounts to Forms 1 and 1–F.[11]

9. Order No. 646 implemented quarterly reporting for entities that filed Forms 1 and 1–F and added annual reporting requirements for ancillary services and electric transmission peak loads.[12] In 2005, Order No. 668 updated the Commission's accounting requirements for utilities and licensees, including independent system operators (ISOs) and regional transmission organizations (RTOs).[13] The Commission also revised its USofA and Forms 1 and 1–F to accommodate industry restructuring under the Commission's open-access transmission policies and increased competition in wholesale bulk power markets.[14]

III. Notice of Inquiry

10. As part of Commission staff's ongoing comprehensive review of the Commission's financial data requirements, a series of public meetings were held in Fall 2006 with both filers and users of FERC's financial reports (Forms 1, 1–F, 2, 2–A and 3–Q). On February 15, 2007, the Commission issued a Notice of Inquiry (NOI) in response to those discussions.[15] The NOI sought comments on the need for changes or additions to the financial information reported on these forms. In response to the comments received, the Commission determined that each of the forms, representing different industries subject to the Commission's jurisdiction, merited its own separate review. Accordingly, the Commission established a separate proceeding in Docket No. RM07–9–000, addressing only changes, additions, and

[2] 18 CFR Parts 158 and 260; *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, Docket No. RM07–9–000, 73 FR 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 31,267, *order on reh'g,* Order No. 710–A, 123 FERC ¶ 61,278 (2008).

[3] 16 U.S.C. 824d.

[4] 16 U.S.C. 824.

[5] A major electric utility is one that had, in the last three consecutive years, sales or transmission services that exceeded (1) one million megawatt-hours of total sales; (2) 100 megawatt-hours of sales for resale; (3) 500 megawatt-hours of power exchanges delivered; or (4) 500 megawatt-hours of wheeling for others (deliveries plus losses). Utilities and licensees that are not classified as major and had total sales in each of the last three consecutive years of 10,000 megawatt-hours or more are classified as nonmajor. *See* 18 CFR Part 101.

[6] 16 U.S.C. 825a, 825f, 825h; *see also* 16 U.S.C. 825j.

[7] *Amendments to FERC Form Nos. 1 and 1–F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses,* Order No. 529, FERC Stats. & Regs. ¶ 30,904 (1990).

[8] *Revisions to Uniform System of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A,* Order No. 552, FERC Stats. & Regs. ¶ 30,967 (1993).

[9] *Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant,* Order No. 574, FERC Stats. & Regs. ¶ 31,013 (1994) (establishing the Form 1 Submission Software (FOSS)).

[10] *Electronic Filing of FERC Form No. 1, and Elimination of Certain Designated Schedules in Form Nos. 1 and 1–F,* Order No. 626, FERC Stats. & Regs. ¶ 31,130 (2002).

[11] *Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities,* Order No. 627, FERC Stats. & Regs. ¶ 31,134 (2002).

[12] *Quarterly Financial Reporting and Revisions to the Annual Reports,* Order No. 646, FERC Stats. & Regs. ¶ 31,158, *order on reh'g,* Order No. 646–A, FERC Stats. & Regs. ¶ 31,163 (2004).

[13] *Accounting and Financial Reporting for Public Utilities Including RTOs,* Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005), *reh'g denied,* Order No. 668–A, FERC Stats. & Regs. ¶ 31,215 (2006).

[14] *Id.*

[15] *Assessment of Information Requirements for FERC Financial Forms,* Notice of Inquiry, FERC Stats. & Regs. ¶ 35,554 (2007).

amendments to the forms applicable to interstate natural gas companies.[16]

IV. Notice of Proposed Rulemaking

11. On January 18, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to revise the Form 1 (and Forms 1–F and 3–Q) and requested comments on several issues, including: (1) Differences between Form 1 data and costs that are reflected in formula rate inputs, (2) the non-jurisdictional utility requirements and revising the Form 1–F reporting threshold for nonmajor utilities, (3) reporting for affiliate transactions, (4) filers whose reporting and accounting systems are based on a non-calendar fiscal year, (5) reporting for ''Other Revenues,'' and (6) the minimum threshold reporting levels for certain line-item information.[17] In addition, the NOPR proposed two non-form related rule changes, concerning notification of non-filing status and grants of extension of time for good cause. The NOPR also invited comments on software updates, revisions to the filing instructions, requests for additional information for particular accounts or schedules, and suggestions to improve the quality, completeness and consistency of data submissions.[18]

V. Discussion

A. Notice of Inquiry

12. In responding to the NOI, Form 1 public utility filers generally emphasized the difficulty and expense of Form 1 preparation, stated that the current scope of information sought is sufficient to evaluate jurisdictional rates, and objected to particular filing requirements as burdensome. In contrast, Form 1 users, including nonprofit publicly-owned utilities and state commissions, disagree—requesting that Form 1 provide additional information to permit more effective review to determine whether current and proposed rates are just and reasonable.

B. Notice of Proposed Rulemaking

13. In the NOPR, the Commission affirmed that the information reported in Forms 1, 1–F and 3–Q is critical to the work of the Commission and stated its expectation that all filers would continue to follow the instructions and submit properly completed forms. The NOPR emphasized the importance of Form 1 data to the Commission, state commissions, utility customers and other interested persons as an important and primary source of information to assess whether rates charged remain just and reasonable or may be unjust and unreasonable. The NOPR stated that the purpose of Form 1, in particular, is to provide basic financial and operational information to allow the Commission, customers, and competitors to monitor a utility's rates for jurisdictional services. Form 1 is an essential tool in the Commission's regulatory program. Form 1 makes publicly available the financial information upon which cost-based rates are developed and provides information on the financial operations of utilities. Form 1 and the underlying data are used in ratemaking and for customer rate and cost monitoring. In addition, because it reflects the Commission's USofA, Form 1 ensures that such data is uniform and comparable between companies and reporting periods. Form 1 is not a substitute for a rate case filing or a projection of future financial performance, however. Instead the data enables the form's users to monitor and assess a utility's rates.

14. Pursuant to the Commission's comprehensive review of its financial reporting forms and based on the responses to the NOI, the Commission determined that wholesale changes were not justified, and instead proposed targeted adjustments to the existing reporting requirements.

15. In response to the NOPR, the Commission received 13 timely comments, one motion to submit comments out-of-time, and one set of reply comments.[19] These comments are summarized in the remainder of the discussion section.

16. After careful consideration of the comments received, the Commission is adopting changes and revisions proposed in the NOPR with certain modifications and clarifications, as discussed below.

17. No comments were filed objecting to the NOPR's proposals concerning (i) accommodating filers whose books close on a non-calendar fiscal year, (ii) filing notifications of changes to non-filing status, (iii) adopting a good cause requirement for reviewing requests for extension of time, and (iv) providing for separate reporting of emissions allowances, such as nitrogen oxide (NO_X) and sulfur dioxide (SO_2). In fact, comments were received supporting several of these proposals, including the non-calendar year accommodation and emission allowances. Therefore, we adopt the proposals as set forth in the NOPR.

18. In addition, several commenters proposed additional reporting requirements or modifications to the proposals made in the NOPR. To the extent such comments proposed revisions that were feasible and in keeping with the goals expressed in the NOPR, the Commission has attempted to incorporate commenters' suggestions as discussed below. The discussion in the ''Commission Determination'' sections addressing each NOPR proposal provides additional detail to clarify those proposals and respond to the comments.

C. Effective Date

19. The NOPR proposed calendar year 2009 as the effective date to implement these changes to the reporting requirements, stating:

> Accordingly, companies subject to the new requirements would file their new Form 3–Qs beginning with the Form 3–Q for the first calendar quarter of 2009 and their new Forms 1 and 1–F in April 2010 for calendar year 2009.

20. The Commission believes that this effective date provides sufficient time for filing companies to collect the information needed to fulfill the reporting obligations proposed in the NOPR and adopted in this Final Rule. Because the changes adopted here are limited in scope, filers have sufficient opportunity to make the necessary changes to their reporting systems to capture the necessary data in the detail needed to complete the new requirements contained in this Final Rule. This proposed effective date thus provides an adequate time for utilities to revise their information collection procedures, and filers will have several additional months before the first reporting deadline to implement the changes needed because the first report due is the Form 3–Q, a quarterly report, due in May 2009. Therefore, the Commission adopts the changes provided for in this Final Rule effective calendar year 2009, consistent with the date proposed in the NOPR.

D. Proposed Revisions

1. Formula Rates

21. In response to comments requesting additional information to accommodate formula rate review, the NOPR proposed the addition of

[16] *Revisions to Forms. Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, FERC Stats. & Regs. ¶ 31,267, *order on reh'g,* Order No. 710–A, 123 FERC ¶ 61,278 (2008).

[17] *Revisions to Forms, Statements, and Reporting Requirements for Electric Utilities and Licensees,* Notice of Proposed Rulemaking, 73 FR 5136 (Jan. 29, 2008), FERC Stats. & Regs. ¶ 32,627 (Jan. 18, 2008) (NOPR).

[18] These proposals were listed in an appendix to the NOPR, which is updated here with Commission responses and provided in Appendix B to this Final Rule.

[19] A list of commenters is attached as Appendix C.

explanatory information when formula rate inputs deviate from data reported in Form 1. Specifically, the NOPR proposed to revise the Form 1 to require that, if the inputs to a formula rate deviate from what is currently shown in the Form 1, the filer must provide an explanation for the deviation in a footnote to the corresponding page, line and column where the specific data is reported. The Commission sought comment on this proposal.[20]

Comments

22. Several commenters support the Commission's proposal for filing utilities to explain departures from Form 1 data in formula rates. SDG&E, for example, notes that many utilities with formula rates already make periodic informational filings to explain the use of modified Form 1 data. SDG&E supports the NOPR proposal and characterizes the proposal as a pragmatic and narrowly-tailored effort to provide additional information that does not duplicate publicly available material, while avoiding a ''one size fits all'' modification to Form 1 that does not address the varieties of formula rates currently in effect or utilities' uses of variations from Form 1 data.

23. APPA also supports the Commission's intent that utilities provide all information necessary for calculating formula rates, but questions whether the Commission's proposal will achieve the desired effect. APPA states that the requirement that filers describe in footnotes details on how formula rates deviate from Form 1 information may be difficult to monitor because staff may lack the means to identify utilities subject to the formula rate information requirement. APPA suggests that the Commission require a new schedule for filers to identify their status in regard to formula rates, which would require a filer to indicate (1) whether it has formula rates; and (2) where to find all explanations for deviations between formula rates and Form 1 information (either informational filings or footnotes in connection with specific page, line and column numbers of Form 1). Such a schedule would ensure that a utility does not omit a necessary footnote and would also locate deviations from Form 1 data. APPA predicts that such a schedule would not change any Form 1 references currently contained in formula rates and should not add any substantial burden to respondents, because it would not repeat the information, but would simply reference the location of the information already compiled.

24. BPA agrees that since formula rates routinely cite specific accounts and page numbers, the Commission should not revise Form 1 accounts or page numbers, so as to necessitate amendments to existing formula rates. BPA supports the use of explanatory footnotes, stating that the footnotes are an essential aspect of Form 1 and may provide the only means for a utility to explain, and Form 1 user to understand, the data. BPA suggests the need for additional enforcement of Form 1 requirements, including penalties for failure to meet footnote requirements.

25. In addition, BPA requests clarification that a statement made in paragraph 41 of the NOPR, ''[t]he annual rate adjustment may not initiate a rate proceeding and the customer's recourse, if it believes the resulting rates are unjust and unreasonable, is to file a complaint under section 206 of the FPA,'' is not intended to change the burden of proof in a section 206 proceeding involving a formula rate. Specifically, BPA requests the Commission clarify that the statement does not shift the burden of proof from the utility to establish that the formula is correctly applied or that the correct data is being used to populate the formula.[21]

26. Nevada Companies suggests that a transmission provider should post the reasons for changes in formula rates on its Web site within a prescribed period of time, which would provide immediate information to customers on changes in rates rather than having to wait for a quarterly or annual filing.

27. TAPS strongly supports the NOPR's effort to further the goal of timely transparency through inclusion of the relevant information in Form 1. TAPS questions the level of detail in an informational filing that would relieve a utility of the requirement to describe formula rate differences in Form 1. TAPS states that the rule should require that the transparency information be included in Form 1 submissions of each utility whose Form 1 data is input into a formula rate. TAPS proposes that waivers be considered where the utility can show that it is legally committed to make annual informational filings that will provide all of the data, of the same quality and reliability, that would otherwise have to be included in its Form 1, and will do so in time to facilitate rate monitoring by customers, regulators, and the public. TAPS also requests that the Final Rule require annual reporting of all historical cost, load, and revenue information that is an input into a Form 1 filing utility's formula rate.

28. The Michigan Commission requests that the Commission initiate a process to address problems associated with its review of utility transmission investment in conjunction with formula rates. The Michigan Commission states that a lack of necessary data reporting in combination with formula rates can shield utility investment decisions from review. The Michigan Commission suggests that the Commission initiate an inquiry, possibly a technical conference, to explore ways that formula rates can be reviewed.

29. Several utility commenters object to the requirement to add footnotes to discuss differences between Form 1 financial information and formula rate inputs for wholesale rates.[22] AEP believes that the Form 1 is a financial report and should continue to be a financial report and not a rate verification report. AEP claims that footnoting differences between Form 1 data and formula rate inputs would, for some filers like AEP, be extensive, voluminous and burdensome to comply with. AEP suggests that multiple rates will require reconciliation, including separate wholesale customer service rates and some regional transmission organization rates. AEP states that the Commission should obtain such information from the seller when needed on a case-by-case basis. AEP suggests that the additional detail need not be made public, and states that the information is better provided as a separate rate filing to be made whenever the formula rate is being changed or supported.

30. EEI encourages the Commission not to add a requirement to Form 1 to explain departures from Form 1 information used as inputs to formula rates. EEI argues that companies should not be required to footnote Form 1 data to explain differences in formula rates, so long as they document changes to formula rate inputs, adhere to the approved formula rate tariffs, and provide information to the Commission and affected customers on request or via informational filings.

31. EEI suggests that the Commission adopt an alternate policy, under which companies adopting formula rates would provide information to customers about rate inputs, including underlying costs and cost increases, in sufficient detail to enable the customers to understand the basis for their rates. EEI states that if the Commission does

[20] NOPR at P 46.

[21] BPA states its understanding that the burden of proof otherwise remains on the party challenging a Commission-approved formula.

[22] *See* AEP, EEI, FirstEnergy, and Duke comments.

impose a formula rate footnote requirement in Form 1, the Commission should: (1) Clarify that the footnote is necessary only to explain departures from Form 1 data when a formula rate tariff calls for specific Form 1 data as inputs and different input data are used; (2) clarify that the footnote requirement applies only to cost-based rates, not to market-based rates (MBR); (3) specify that, if a seller files informational filings containing information about inputs to its formula rates, a footnote is not required; (4) specify that if customers have audit rights under a formula rate tariff, a footnote is not required; (5) specify that if a company has explained departures from Form 1 data as inputs to a formula rate elsewhere in information available to the Commission and customers on request, it is not required to do so again in Form 1; (6) specify that, if the footnote cannot be added before Form 1 is filed, it can be added at the next reporting cycle; and (7) address how the footnote should be prepared when multiple operating companies or gas and electric companies are involved and not all of those companies are reflected in a given Form 1.

32. FirstEnergy requests that the Commission clarify that its proposal is not a blanket requirement on companies filing the Form 1 to include any changes on inputs to formula rates in a footnote to the relevant page in Form 1. Similarly, the Commission should also clarify that its proposed requirement would not preclude companies from submitting the formula input information in filings other than Form 1.

33. FirstEnergy states that companies should not be required to submit informational filings or otherwise report situations in which formula rate inputs differ slightly from what is shown in Form 1, and requests the Commission to clarify whether such disclosures will now be required. To the extent that such information will be required, FirstEnergy does not believe that Form 1 is an appropriate vehicle for reporting information concerning a utility's formula rates. FirstEnergy states that Forms 1 and 3–Q are financial statements providing information in accordance with the USofA and argues that the forms are not, and should not be, considered ratemaking documents to be used for ratemaking purposes.

Commission Determination

34. In this Final Rule, as we explain below, we adopt the NOPR proposal that Form 1 filers should provide explanatory information when formula rate inputs differ from Form 1 reported amounts.[23] That is, with regard to formula rates for which no informational filings are required to be regularly submitted to this Commission, we revise the Form 1 to require that, if the formula rate relies on Form 1 data and if the input amounts to that formula rate differ from what is shown in the Form 1, the filer must provide a narrative explaining the reason for the difference. The explanation must be provided in a footnote on the same page, line and column where the specific data is reported.

35. As described above, EEI states that companies which provide service under formula rates should make additional information available if requested by customers, on an as-needed basis, if such information is not already being provided in the informational filings. EEI recommends that the Commission adopt an alternative policy, under which companies using formula rates would provide information to customers about rate inputs, including underlying costs and cost increases, in sufficient detail to enable the customers to understand any deviations to the inputs used in calculating the formula rates.

36. With respect to EEI's requests for various clarifications, we adopt portions of EEI's recommendations as follows. Consistent with the NOPR proposal we limit the footnoting requirement so that it will only apply to utilities with formula rates that do not make regular (*i.e.*, at least annual) informational filings of cost data with the Commission pursuant to the requirements of their formula rates (or for example, pursuant to the requirements of a Commission-approved settlement or a Commission directive). We believe it is unnecessary to require companies that are required to make regular informational filings to include a footnote in Form 1 because any difference from any Form 1 inputs used in formula rates should already be described in sufficient detail in their informational filings.[24]

37. In addition, EEI requests clarification of the treatment of formula rates accepted under our MBR policies. We clarify that a rate is subject to the footnoting requirement if it relies on Form 1 data and is on file with the Commission. Such rates may be featured in tariffs of general applicability or individual rate schedules.[25] We further adopt EEI's suggestion that, if companies have formula rates but do not make such informational filings with the Commission, they must maintain sufficient records that explain the changes made to those inputs[26] (and, of course, must adhere to the approved formula rate tariffs on file) and provide that information to the Commission, state commissions and affected customers on request. Furthermore, we clarify that if customers have audit rights under a formula rate, a footnote is still required, so that utilities can describe how the rate was derived (as described herein).

38. With respect to EEI's request that the Commission specify that footnote information that cannot be added before Form 1 is filed may be added at the next reporting cycle, we clarify that if the necessary information is not available at the time for filing (given that Form 1 is an annual report), the utility must provide the information in its next Form 1 filing.

39. As stated in the NOPR, we do not propose to convert the Form 1 filing process into a rate proceeding. As noted by several commenters, Form 1 is an historical financial reporting document. However, Form 1 provides cost and revenue data that aids in evaluating the justness and reasonableness of rates in a ratemaking proceeding, and Form 1 serves as a ready source of public information to assess on an ongoing basis the justness and reasonableness of utility rates. In particular, for a formula rate, Form 1 identifies costs that result in annual fluctuations in rates as costs rise and fall. Thus, Form 1 plays an important role in the Commission's rate review process.

40. A key component of this rate review process is the transparency provided by requiring utilities to make information on costs underlying rates publicly available. This cost information is, in turn, used by the Commission, state commissions, and customers to review and monitor a utility's rates, which, as appropriate, may ultimately result in an investigation or a complaint proceeding. Thus, Form 1 is a valuable tool. Commenters' attempts to establish a bright line between financial reporting

[23] Other than comprehensive formula rates, the Commission's regulations provide for automatic adjustment of only those costs specified in section 35.14 of our regulations (fuel adjustment clause). *See Public Service Company of Oklahoma,* 40 FERC ¶ 61,215, at 61,733 (1987).

[24] Thus, utilities that are required to make regular informational filings by their formula rates, a Commission-approved settlement, or other Commission order need not provide footnotes. These filers must nevertheless complete the new schedule provided in page 106.

[25] We clarify that we do not seek the explanatory information for fuel adjustment clauses, which are governed by separate policies established in the Commission's regulations and which typically would not reference Form 1. *See* 18 CFR 35.14.

[26] This recordkeeping requirement is in addition to any other Commission recordkeeping requirement, *see, e.g.*, 18 CFR Parts 101, 125, including the footnoting requirement adopted in this Final Rule.

and rate making are insufficient for the Commission to withdraw its proposals to seek information that will assist the Commission in carrying out its statutory obligations to ensure that rates are just and reasonable, and to assist others—including customers—with monitoring rates charged.

41. The NOPR did not propose to revise the Commission's USofA accounting requirements to track specific costs or cost estimates for future projects as suggested by TAPS and the Michigan Commission. Therefore, we will not adopt proposals to track additional costs that would require changes to the Commission's accounting requirements.

42. In response to APPA's comments concerning how Commission staff will determine whether a utility is subject to a regular informational filing requirement for its formula rate, we note that the existence of such a filing requirement is a matter of public record for each formula rate. That is, the requirement that a utility make a regular informational filing describing the information that will be used to populate the formula rate is typically established in the rate proceeding accepting the formula rate. If an interested entity believes that a utility has failed to include the required footnotes, or that a utility has not responded in a timely manner to a request for an explanation of the applicable formula rate and the inputs to that rate, it should discuss the matter with the utility and, if not satisfied, may, among other things, notify the Commission through our enforcement Hotline and the Commission's Office of Enforcement will take appropriate action.

43. Based on the record in this proceeding, the Commission does not anticipate that this reporting requirement will be unduly burdensome because the information is already available and can be transposed to a footnote.

44. Several filing utilities request the Commission to clarify the scope of the formula rate footnoting requirement. Initially, as noted above, the Commission clarifies that a filing company should footnote differences from Form 1 data in formula rates that are on file with this Commission and that rely on Form 1 data, and that such rates may be featured in tariffs of general applicability or individual rate schedules.[27] The Commission also clarifies that it is not necessary to provide a detailed reconciliation. The Commission anticipates that the footnotes would contain a simple narrative explaining how the ''rate'' (or billing) was derived if different from the reported amount in the Form 1. For instance, differences could be due to: (i) Application of a percent allocation factor for gross transmission plant that is OATT related; (ii) excluding particular items such as step-up transformer investment; (iii) deducting amounts for transmission for others from total transmission expenses or applying an OATT transmission factor; or (iv) excluding particular cost items from administrative and general expenses or application of an OATT labor factor. This list is not exhaustive, we caution, but is strictly for illustration purposes; the Commission anticipates that similar issues would be footnoted in Form 1. The description should describe the difference, including any reference to a Commission proceeding approving the difference. Such an explanation should be sufficient to alert interested parties of the deviation and to permit them to estimate and evaluate the impact of the departure on rates.[28] In this fashion, interested entities should be able to, with reasonable accuracy, monitor rates in light of current costs and available financial data.

45. In response to suggestions that formula rate information be centralized, a new schedule (page 106) will be incorporated in Form 1 on which filers will (1) indicate whether they have formula rates; (2) provide details about the formula rates; (3) indicate whether the filer makes regular informational filings and the location of the filings (*e.g.*, accession numbers) on the Commission's eLibrary Web site; and (4) summarize, if required,[29] the differences between the Form 1 amounts and any amounts included in a formula rate as described above.[30]

46. AEP is concerned that reporting may be difficult because of the number and variety of rate schedules and tariffs that may be covered by this requirement. As stated above, we do not anticipate that this requirement need rise to the level of an accounting reconciliation; a narrative description (with reference to a rate proceeding adopting the difference) may suffice.

47. In addition, a utility is not precluded from filing modifications to its formula rates to make cost references consistent with Form 1 reporting requirements as they are updated.[31]

48. In response to BPA and the Michigan Commission, we clarify that this Final Rule does not change our policies with respect to the burden of proof associated with challenges to previously approved formula rates under section 206.[32] Form 1 is not filed pursuant to sections 205 or 206 of the FPA and, therefore, its submittal will not initiate a rate proceeding or investigation. A rate proceeding is initiated by a rate filing under section 205, or an investigation initiated either in response to a complaint or pursuant to a notice of Commission investigation under section 206. Additional information to assess jurisdictional rates may be requested from the utility or sought through discovery in an appropriate proceeding; the Commission's actions here do not, for example, affect the scope of discovery in litigated proceedings.

49. In addition, we reject TAPS' proposals to change the Commission's accounting as beyond the scope of this proceeding, which relates to reporting requirements for the various accounts defined by the USofA, and we reject the Nevada Companies' proposal to revise our OASIS Web site posting requirements; both should be addressed in more appropriate proceedings reviewing the Commission's accounting and OASIS regulations.

50. With respect to the Michigan Commission's suggestion that the Commission initiate an inquiry into the Commission's formula rate policies and whether formula rates can shield future utility investment decisions from review, the Commission declines to initiate such an investigation. The NOPR rejected calls for reporting

[27] As noted above, we do not seek the explanatory information for fuel adjustment clauses, which are governed by separate polices under the Commission's regulations and typically do not reference Form 1. *See* 18 CFR 35.14.

[28] The information contained in a formula rate footnote (as for any Form 1 footnote) should be specific to the data provided in the form, and not simply transferred from consolidated financial statements that may reflect different assumptions and reporting requirements.

[29] Whether or not a public utility or licensee must provide this information is addressed above.

[30] Revised Form 1 pages affected by this Final Rule are provided in Appendix A.

[31] The Commission reiterates that utilities that are required to make regular informational filings by their formula rates, a Commission-approved settlement, or other Commission requirement (*e.g.*, a Commission requirement imposed as a condition of acceptance of the formula rates) need not provide footnotes. These filers must nevertheless complete the new schedule provided in page 106.

[32] *See* Order No. 710 at P 12 (noting that despite changes made to gas reporting forms, a party filing a complaint has the burden to show why the information in the Commission's financial forms supports an allegation that the existing rates are not just and reasonable, and that the changes adopted in Order No. 710 do not limit an entity's rights under governing law and the Commission's regulations, nor change the Commission's obligation to rule on complaints, petitions, or other requests for relief based on a full record and substantial evidence).

information on future transmission investments, stating that Form 1 is intended to provide information on a utility's financial activities for the reporting year, but does not include projections of future costs.[33] Comments filed in response to the NOPR have not persuaded us to change our views. Should an entity desire to question the prudence of a utility's transmission investment decisions, it may file a complaint with the Commission.[34]

2. Filing Thresholds for Form 1

51. The NOPR proposed to eliminate the filing requirement for utilities that are not subject to the Commission's jurisdiction because they are not public utilities under Part II of the FPA, but make sales that meet or exceed the threshold for meeting the Commission's Forms 1 and 3–Q reporting requirements.[35] The NOPR also sought comment on whether to revise the definitions for major and nonmajor utilities, inviting specific suggestions for how this might be done with justifications for proposed thresholds.[36] The NOPR mentioned that the Commission was aware of five non-jurisdictional utilities that otherwise met or exceeded the threshold for reporting: Alaska Electric and Power Co.; CenterPoint Energy Houston Electric, LLC; Hawaii Electric Light Co., Inc.; Hawaiian Electric Co., Inc.; and Maui Electric Co., Ltd.

52. The NOPR cited an order where the Commission recently granted waiver of the financial form filing requirements under such circumstances. In *Morenci Water and Electric Co.,* the Commission granted a waiver from the requirement of §§ 141.1 and 141.400 of the Commission's regulations that utilities who are not public utilities under Part II of the FPA but who otherwise meet the threshold filing requirements for Forms 1, 1–F and 3–Q must comply with the reporting requirements established in the regulations.[37]

Comments

53. No commenter objected to these proposals. International Transmission proposes, however, that non-major electric utilities and non-jurisdictional utilities that belong to a joint rate zone be required to file Form 1 and that, for purposes of the filing thresholds, all of the electric utilities in a joint rate zone should be deemed major electric utilities. International Transmission thus proposes that, in addition to the numerical filing thresholds, the General Instructions to Part 101 be revised to require that: (1) Nonmajor electric utilities in joint rate zones with major electric utilities be required to file Form 1; and (2) non-jurisdictional utilities in joint rate zones with jurisdictional public utilities also be required to file Form 1.

Commission Determination

54. In this Final Rule we are removing the words ''whether or not the jurisdiction of the Commission is otherwise involved'' from §§ 141.1(b) and 141.400(b), which establish the filing requirements for Form 1 and Form 3–Q, respectively. With this change, companies that are not subject to the Commission's jurisdiction because they are not public utilities (or licensees) need no longer file Form 1 or 3–Q. If a company is concerned that it may still fall within the revised requirements of §§ 141.1(b) or 141.400(b), but nevertheless should be exempted from filing Forms 1 and 3–Q, it may continue to seek an individual waiver from the Commission. No commenter, we add, objected to the proposal to cease requiring filing by companies that do not otherwise fall under the Commission's jurisdiction, but meet the minimum filing requirements found in §§ 141.1 and 141.400 of the Commission's regulations.

55. The Commission rejects International Transmission's proposal to revise the definitions that distinguish major and nonmajor utilities, to require utilities that participate in joint rate zones with major utilities to also file Form 1. International Transmission's proposal expands the reporting requirement so that it would apply to non-jurisdictional entities and also would require small utilities to file Form 1, regardless of the reporting threshold. International Transmission's proposal would unreasonably increase the reporting burdens on small utilities. Therefore, we reject the proposal.

3. Affiliate Transactions

56. To provide further transparency and improve the detection of cross-subsidization, the NOPR proposed to add a new schedule and page 429, ''Transactions with Associated (Affiliated) Companies,'' providing information concerning affiliate transactions. The NOPR proposed that filers would report the following: (1) A description of the good or service charged or credited; (2) the name of the associated (affiliated) company; (3) the USofA account charged or credited; and (4) the amount charged or credited.[38]

Comments

57. Several commenters support the proposal,[39] and some include proposals to expand the reporting requirement.[40] Others object to the affiliate transaction reporting requirement [41] or argue that such a requirement would be duplicative of other reporting obligations, unnecessary and burdensome.[42]

58. APPA supports the Commission's proposal to add the new schedule to collect information on affiliate transactions. The Michigan Commission states that detailed descriptions of costs allocated to jurisdictional operations from affiliates are essential to detect cross-subsidization. It also requests clarification whether the Commission intends that an allocation for common facilities that are billed to one or more affiliates be reported as an affiliate transaction. The Michigan Commission requests that the Commission require additional detail, consisting of a description of all allocation factors used by the utility and its affiliates and an explanation of how ''direct'' and ''common'' costs are defined and implemented.

59. Nevada Companies states that affiliate transactions should be reported by type of service provided and goods transferred. The Nevada Companies note that reporting amounts by types of services provided would link this report to master service agreements entered into by many affiliated companies. They also request a definition of good or service.

60. SDG&E recommends that the Commission clarify that the affiliate transaction information required to be provided is limited to transactions between a jurisdictional utility and its affiliates and does not include transactions solely between or among the affiliates.

61. Nevada Companies requests that affiliate transaction information only be reported annually for companies that prepare similar information to fulfill state requirements, suggesting the proposed reporting requirement could be met by state oversight. AEP objects to an affiliate transaction reporting

[33] NOPR at P 54.

[34] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 at P 435 (2007), *order on reh'g,* Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008).

[35] NOPR at P 50.

[36] *Id.* P 48.

[37] *Morenci Water and Electric Co.,* 121 FERC ¶ 61,024 (2007).

[38] NOPR at P 51–52.

[39] APPA and Michigan Commission comments.

[40] International Transmission, and SDG&E comments.

[41] *See* AEP, EEI, MidAmerican, and Nevada Companies comments.

[42] FirstEnergy and Duke comments.

requirement and suggests that the issue is a state regulatory matter.[43]

62. Duke requests that the Commission clarify that the new page 429 is not intended to require the reporting of affiliate transactions between the electric utility and centralized service companies, as this information is already reported in FERC Form No. 60 (Form 60). FirstEnergy states that the new page would result in a duplication of effort since the same information is already reported to the Commission in other FERC forms, including the Form 60, and other places in Form 1, such as page 332, Transmission of Electricity by Others and pages 326–327, Purchased Power. At a minimum, FirstEnergy requests that a set of parameters be established for reporting the information requested, and suggests filers be permitted to report the information by general category rather than by individual transactions.

63. MidAmerican objects to detailed reporting of each affiliate transaction as unnecessarily burdensome and states that the information is already being provided in other publicly available documents. MidAmerican requests that the Commission limit any affiliate transaction reporting requirement and (1) establish an aggregate annual transaction reporting threshold of the greater of (a) $250,000 per affiliate or (b) one one-hundredth of one percent (.01%) of the electric utility's operating revenues[44] and (2) exempt transactions based on regulator-approved tariffs.[45] The Nevada Companies request that $100,000 be set as a reasonable minimum amount to report the transfer of a good, or an aggregate amount of service.

64. EEI states that the affiliate transaction reporting proposal is inconsistent with the Commission's decisions in Orders No. 707 and 708 not to require additional reporting.[46] International Transmission and Nevada Companies object to an affiliate reporting requirement that would apply to transactions between regulated public utilities. International Transmission cites the Commission's proposal that page 429 is to ''provide further transparency and improve the detection of cross-subsidization.''[47] International Transmission states that a broad, one-size-fits-all requirement that includes reporting of transactions between affiliated regulated public utilities would not produce useful information for detecting improper cross-subsidization for the benefit of non-utility affiliates. International Transmission argues that the regulated affiliates' Form 1 filings already provide ample transparency and that the affiliate transaction reporting requirement is therefore not necessary for affiliate transactions between regulated public utilities.

Commission Determination

65. Consistent with our natural gas reporting requirements established in Order No. 710, we will adopt the NOPR proposal and incorporate new page 429, Transactions with Associated (Affiliated) Companies. Consistent with the reporting threshold established in Order No. 710, the schedule instructions incorporate a $250,000 threshold for reporting individual transactions. While some commenters suggested alternative thresholds, we find that the threshold we adopt here reasonably balances the burden while still reporting needed information. Therefore, we will not adopt the suggested alternative proposals.

66. In response to requests that the Commission specify the affiliated or associated company transactions to which new page 429 applies, we clarify that the schedule applies to all affiliated/associated company non-power goods and services transactions including those with other regulated public utilities, centralized and other service companies, and other affiliated or associated companies providing non-power goods and services to the respondent or receiving non-power goods or services from the respondent. However, we also clarify that page 429 does not apply to transactions between affiliate or associate companies that do not include the respondent utility.

67. We disagree with EEI that the ''affiliate transaction reporting proposal is inconsistent with the Commission's decisions in Orders No. 707 and 708 not to require additional reporting.'' We note that, although Order No. 707 did not adopt a reporting requirement, at the same time the NOPR in this proceeding alerted interested persons that the Commission was separately proposing the additional affiliate transaction reporting requirements that are adopted in this Final Rule. Order No. 707 was intended to update our rate filing regulations to reflect our expanded authority following the repeal of the Public Utility Holding Company Act of 1935 (PUHCA 1935).[48] In Order No. 707, the Commission codified in its rate regulations[49] restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, on the one hand, and their market-regulated power sales affiliates or non-utility affiliates, on the other. Order No. 707 addressed both power and non-power goods and services transactions between the utility and its affiliates and specifically power sales affiliates. This proceeding provides expanded affiliate/associate transaction reporting to facilitate monitoring affiliate/associate non-power goods and services transactions as part of a comprehensive proceeding to update our reporting requirements. Thus, while Order No. 707 did not expand reporting to implement the revised rate filing regulations adopted in the wake of the repeal of PUHCA 1935, this proceeding is based on the need for data to monitor on an ongoing basis utility rates to ensure that they remain just and reasonable. On the basis of the record in this proceeding, we find that the additional reporting requirement adopted here is appropriate because it will assist the Commission and the public in monitoring a utility's rates.

68. Order No. 708 adopted a blanket authorization permitting certain dispositions under section 203, such as the disposition of less than 10 percent of public utility voting securities to a holding company that does not thereby exceed certain voting interest thresholds. The requirements in Order No. 708 to report security dispositions made pursuant to blanket authorizations were designed to implement the new authorizations. Order No. 708 does not establish general reporting requirements or policies and the requirements established there are not relevant to the proposal adopted in this Final Rule.

69. The Form 60 requirements are limited to total direct costs, total indirect costs and total costs of goods and services provided to each associate company by centralized service

[43] *See also* Nevada Companies comments.

[44] SDG&E also supports a $250,000 reporting threshold for affiliate transactions.

[45] In particular, MidAmerican notes that it is bound to serve affiliates due to its provision of service to 2.5 million retail customers. MidAmerican argues that provision of service in accordance with a state-regulator-approved tariff precludes the opportunity for cross-subsidization or preferential service. MidAmerican states that the same holds true where MidAmerican purchases tariff services from an affiliate of its parent (Berkshire Hathaway).

[46] *Cross-Subsidization Restrictions on Affiliate Transactions,* Order No. 707, 73 FR 11013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264, *order on reh'g,* Order No. 707–A, 73 FR 43072 (Jul. 24, 2008), FERC Stats. & Regs. ¶ 31,272 (2008); *Blanket Authorization Under FPA Section 203,* Order No. 708, 73 FR 11003 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,265, *order on reh'g,* Order No. 708–A, 73 FR 43066 (Jul. 24, 2008), FERC Stats. & Regs. ¶ 31,273 (2008).

[47] *Citing* NOPR at P 52.

[48] 15 U.S.C. 79a, *et seq.*

[49] 18 CFR Part 35.

companies. The new reporting requirement provides more detailed information (in the form of individual transactions) about non-power goods and services provided by utilities to other affiliated/associated companies and non-power goods and services provided by affiliated/associated companies to utilities which is lacking in the Form 60 requirements. While the proposed Form 1 information requirement might be part of the total reported in Form 60, at least for transactions where centralized service companies provide non-power goods and services to the respondent utility, it is not duplicative. As compared to the other information in Form 1, we clarify that the new requirements apply only to non-power goods and services and thus do not apply to power sales. Therefore, we find that the new reporting requirements have not been shown to be duplicative of other requirements.

70. The Michigan Commission requests clarification whether the Commission intends that an allocation of common facilities that are billed to one or more affiliates be reported as an associate/affiliate transaction. We clarify that apportionment of costs of a common facility should be reflected on page 429. Some examples of items that could be reported as an associate/affiliate transaction include the amount of rent or property apportioned to a utility for a common building; the apportioned cost of a computer network along with costs to maintain such network, the apportioned cost of a garage used to house common trucks; the apportioned cost of phone networks and other phone costs. The allocation should also be disclosed as required in Instruction 3 of page 429 which requires the basis of the allocation.

71. Nevada Companies requests that affiliate transaction information need only be reported annually for companies that prepare similar information to fulfill state requirements, suggesting the proposed reporting requirement could be met by state oversight. AEP objects to an affiliate transaction reporting requirement and suggests that the issue is a state regulatory matter. We disagree that this information is a state regulatory matter; the information is needed for monitoring Commission-jurisdictional rates. Also, more generally, not all states provide oversight. Furthermore, as noted above, this action is consistent with the Commission's adoption of a similar requirement for natural gas companies in Order No. 710.

72. International Transmission asserts that a broad, one-size-fits-all requirement that includes reporting of transactions between affiliated, regulated public utilities would not produce useful information for detecting improper cross-subsidization for the benefit of non-utility affiliates. While the Commission appreciates that additional requirements may be useful to address concerns in particular cases, the Commission believes that the reporting requirement adopted here will provide useful information and will aid in detecting improper cross-subsidization.

73. We clarify, for purposes of page 429, that by ''goods'' we mean any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge. Similarly, for purposes of page 429, by ''service,'' we mean any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.[50] These definitions should address the concerns of commenters who are uncertain whether a particular charge or arrangement need be reported as an affiliate transaction.

4. CPA Certification for a Non-Calendar Fiscal Year

74. The NOPR noted that, although Form 1 is filed on a calendar year basis, some reporting companies operate on a non-calendar fiscal year. In response to comments describing the burden to prepare two sets of audited statements faced by companies that do not use a calendar fiscal year, the NOPR proposed to eliminate the burden by requiring public utilities using non-calendar fiscal years to continue to file annual reports each April, and file a certified set of financial statements following the end of the fiscal year.[51] The second, certified set of financial statements is to be independently audited and accompanied by a certified public accountant (CPA) certification as required by the Commission's regulations.[52] This revision will permit non-calendar year public utilities to avoid duplicative audits.

75. This approach is consistent with the Commission's existing practice; *i.e.*, the Commission's historical practice of granting individual requests for waiver of the CPA certification requirement for Forms 1 and 1–F filers so long as the certification accompanies the fiscal year-end financial information filed after the annual Form 1 or 1–F is submitted.[53]

Comments

76. No commenter objects to the proposal. EEI encourages the Commission to clarify that, with adoption of the NOPR's proposed amendment to 18 CFR 41.11, companies will no longer need to seek a waiver, or if a company must continue to seek a waiver they need do so only once and the waiver would then apply in perpetuity barring a subsequent filing by the company or notice by the Commission.

Commission Determination

77. We adopt the NOPR proposal to revise § 41.11 to accommodate filing parties who follow accounting and reporting practices under which their fiscal year does not match the calendar year. Companies seeking waiver of the calendar-year independent accountant certification requirement must request authority to file the independent accountant certification based on their fiscal year information. Once the request is granted, however, we will not require the company to annually renew the request. Instead, the company must annually notify the Commission in writing at the time that it files its initial annual report that it will continue to file the certification based on fiscal year information (or is returning to a calendar year reporting). The certification for fiscal year companies must be filed no later than 150 days after the end of their fiscal year which is a period comparable to calendar year filers.

5. ''Other Revenues'' (Pages 300–301)

78. The NOPR proposed to expand the reporting of ''Other Revenue'' data referenced in pages 300 and 301 to enable the Commission and the forms' users to achieve a meaningful understanding of the nature of the business activities from which the

[50] *See* 18 CFR 366.1; 18 CFR 367.1(a)(20) and (44); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g,* Order No. 667–A, FERC Stats. & Regs. ¶ 31,213, *order on reh'g,* Order No. 667–B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g,* Order No. 667–C, 118 FERC ¶ 61,133 (2007) (incorporating definitions from Securities and Exchange Commission, Public Utility Holding Company Act of 1935 Release No. 125 (1936) (codified at 17 CFR 250.80)).

[51] NOPR at P 56.

[52] 18 CFR 41.11.

[53] *See, e.g., PacifiCorp,* Docket Nos. AC00–20–000 and AC00–20–001 (Apr. 14, 2000) (unpublished letter order).

revenues are derived.[54] Greater detail concerning these revenue accounts could provide data that would enable the Commission and utility customers to identify revenues received by the filing companies and to understand how these transactions may affect the companies' cost of service. To that end, the NOPR proposed to revise the instructions on page 300 to require that details of items included in Other Revenues be reported in a footnote to pages 300–301.

79. Page 300 itemizes total electric operating revenues, composed of various types of sales of electricity (consisting of accounts 440–449), less provision for rate refunds, in addition to Other Operating Revenue. The data provided on page 300 on Other Operating Revenue includes accounts 450 (forfeited discounts), 451 (miscellaneous service revenues) and 453–457.2 (including water and water power sales, rents, other electric revenues, regional control service revenues and miscellaneous revenues). Because Form 1 contains only a cumulative total for the reporting year of the various Other Revenues, the NOPR proposed that filers include a detailed breakdown of the various sources of other revenues in a footnote to page 300 for any revenues not otherwise specified on pages 328–330, Transmission of Electricity for Others (including transactions referred to as ''wheeling'').

80. Form 1 reports Total Other Operating Revenues (page 300, line 26), which include Revenues from Transmission of Electricity for Others (page 300, line 22, account 456.1). The details of account 456.1 are reported on pages 328–330, (Transmission of Electricity for Others (including transactions referred to as ''wheeling'')). The NOPR proposed two changes and requested comment. First, the NOPR proposed to revise the instructions on page 300 to require that for any revenues reported on line 26, excluding amounts reported on line 22, the filer must in a footnote report details on the other line items to page 300.[55] Second, the NOPR asked for specific comment on a New York Commission proposal to clarify the instructions on pages 300–301 to indicate that delivery-only revenues shall be recorded as Other Electric Revenues (Account 456), while sales of electricity shall be recorded on a full-service basis (Accounts 440 through 448), to reflect that the USofA does not unbundle electric operating revenues.[56]

Comments

81. The New York Commission supports the proposal, stating that the Commission should require electric utilities to report other income and other income deductions in order to assess whether rates are just and reasonable. The Michigan Commission also supports the proposal, describing Form 1 as currently reporting a cumulative total for only two broad categories of revenue: ''Revenue from Transmission of Electricity for Others'' and ''Other Electric Revenues.'' The Michigan Commission requests that the Commission require filers to provide additional details, *i.e.*, revenue for wholesale distribution, retail distribution, opportunity sales, and retail sales (with a breakout of bundled and customer choice sales); breakouts by state jurisdiction and rate schedule; and reporting of the value of ''unbilled sales.'' The Michigan Commission also requests that the Commission require a breakout of ''Revenue from Transmission for Others'' by rate schedule.

82. Nevada Companies suggest $500,000 as a reasonable minimum threshold for reporting Other Revenues and also suggests, as with affiliate transactions, that the items be reported by category and not by transaction.

83. EEI requests that the Commission clarify that the requirement for additional details on page 300 applies only to FERC account 456, Other Electric Operating Revenues, and specify whether the requirement applies to account 457.2, Miscellaneous Revenues used by RTOs and ISOs. EEI requests that the Commission establish a threshold of $500,000 or 10 percent of the balance in the FERC account, whichever is greater.

84. Duke is opposed to the Commission's proposal to add a footnote to page 300 in order to provide users with additional detail related to all Other Revenues not otherwise specified on pages 328–330, arguing that the benefit from the proposed requirement is outweighed by the additional burden placed on filers. Duke proposes that any breakout requirement should only apply to the two accounts that are truly ''miscellaneous'' in nature, account 451, Miscellaneous Service Revenues, and account 456, Other Electric Operating Revenues, and should only require categorization of the types of charges included in these two accounts.

85. FirstEnergy objects to the New York Commission's proposed revision. FirstEnergy generally notes that reporting practices should follow accounting practices. If, however, the Commission is proposing a change in accounting practice, FirstEnergy submits that this proceeding is not the appropriate forum to propose such a change, which should be addressed in a separate rulemaking preceding that does not relate solely to proposals on reporting requirements.

86. APPA supports the proposal to clarify the pages 300–301 instructions to distinguish unbundled, delivery-only transactions from the remainder of the transactions and provide consistency in filer data. Cogentrix supports the New York Commission proposal that delivery-only revenues be recorded in Other Electric Revenues (account 456), while sales of electricity (including bundled sales) be recorded in accounts 440 through 448.

Commission Determination

87. In this Final Rule, we adopt the NOPR proposals to revise the instructions on pages 300 and 301. Several commenters requested clarifications to the scope of the additional reporting requirement for Other Revenues. In response, we clarify that a filing company shall provide in a footnote information on ''any revenues'' not otherwise specified in the breakdowns of Other Revenues provided on page 300 or on pages 328–330.[57] The Commission clarifies that the information provided on these pages should be comprehensive, meaning that any and all revenues should be described for each source of income in the same degree of detail as for the specific items for which a breakout is already required. For example account 456, Other Electric Revenues would include, among other items, commission on sale or distribution of electricity of others when sold under rates filed by such others; compensation for minor or incidental services provided for others such as customer billing, engineering,

[54] NOPR at P 57. NOI commenters coined the phrase ''Other Revenue'' to refer to the unspecified revenues referenced on pages 300 and 301. In response to comments on the NOPR proposal, the scope of the Other Revenue reporting requirement is more precisely defined in the discussion below.

[55] *Id.*

[56] The New York Commission proposal is provided as line item 36 of Appendix B (corresponding to Appendix C of the NOPR).

[57] Page 300 already tracks various specific sources of other revenue, including Forfeited Discounts (account 450), Sales of Water and Water Power (account 453), Rent from Electric Property (account 454), Interdepartmental Rents (account 455), Revenues from Transmission of Electricity of Others (account 456.1) and Regional Control Service Revenues (account 457.1). These accounts are not subject to the additional reporting requirement (or the $250,000 reporting threshold). Page 300 also incorporates three general accounts, Miscellaneous Service Revenues (account 451), Other Electric Revenues (account 456), and Miscellaneous Revenues (account 457.2).

etc.; profit or loss on sale of material; and supplies not ordinarily purchased for resale and not handled through merchandising and jobbing accounts. The Commission anticipates that the additional information should provide details on the amounts included in the general accounts (account 451, Miscellaneous Service Revenues, line 17 of page 300; account 456, Other Electric Revenues, line 21; and account 457.2, Miscellaneous Revenues, line 24) and that such reporting, along with the detail on page 300, should account for all sources of the filing company's other revenue.

88. In the NOPR, the Commission did not propose a threshold for disclosing ''Other Revenues.'' Nevada Companies suggest $500,000 as a reasonable minimum threshold guideline for reporting Other Revenues. EEI requests that the Commission establish a threshold of $500,000 or 10% of the balance in the USofA account, whichever is greater. Consistent with the statements the Commission made in Order No. 710–A when adopting the threshold amounts for grouping natural gas items, we find that the absence of a minimum threshold could add a substantial burden to the forms' filers.[58] We find that an alternative threshold of $250,000 is reasonable and not unduly burdensome, and will, nevertheless, provide meaningful data to this Commission, state commissions, and customers. We also note that the threshold here is consistent with that used in FERC Form No. 2 (Form 2). In keeping with this analysis, the Commission adopts a minimum threshold of $250,000 per source of income, consistent with the amounts reported on page 308 of Form 2, which reports other operating revenues.

89. The Michigan Commission requests that the Commission require filers to provide additional breakouts of revenue for wholesale distribution, retail distribution, opportunity sales, and retail sales (with a breakout of bundled and customer choice sales); breakouts by state jurisdiction and rate schedule; and reporting of the value of ''unbilled sales.'' Michigan Commission also requests that the Commission require a breakout of ''Revenue from Transmission for Others'' by rate schedule. The requests by Michigan Commission would require changes to the Commission's accounting requirements. We are not prepared to, and did not propose in the NOPR to, revise our accounting requirements at this time; the Michigan Commission proposals are beyond the scope of our original proposal and so we decline to adopt them at this time.

90. With regard to commenters' suggestions that a delivery-only transaction be separately disclosed, rather than included in electric sales (accounts 440–447), such an accounting requirement would require revision to the USofA, which is beyond the scope of this proceeding and which we decline to do at this time. Therefore, we will not require companies to separate out delivery-only transactions in their Form 1.

6. Increases to Threshold Reporting Levels

91. The NOPR found that it is reasonable to increase certain threshold levels for reporting specific cost items and invited comment. Specifically, the NOPR proposed to increase the threshold reporting levels for (i) page 216 (Construction Work in Progress) to $1 million, (ii) pages 232, 233 and 278 (Other Regulatory Assets, Miscellaneous Deferred Debits and Other Regulatory Liabilities) to group items featuring an aggregate outstanding balance of $100,000 or less, (iii) page 269 (Other Deferred Credits) to $100,000, and (iv) pages 352 and 353 (Research and Development) to $50,000.[59]

Comments

92. Several commenters support the proposals to increase the threshold reporting levels.[60] BPA, however, states that Form 1 should contain more information and detail rather than less and that no accounts or level of detail should be removed from the current Form 1 requirements. Duke and Nevada Companies each proposes alternative thresholds as detailed in the following table.

	Page No.	Title of schedule	NOPR proposal	Duke	Nevada companies
1	216	Construction Work in Progress—Electric (Account 107).	$1,000,000 or less may be grouped.	Graduated scale based on total assets base.	Report projects $10,000,000 or more.
2	232	Other Regulatory Assets (Account 182.3).	Amounts less than $100,000 may be grouped by classes.	$1,000,000, or a graduated scale based on total asset base.	$1,000,000.
3	233	Miscellaneous Deferred Debits (Account 186).	Amounts less than $100,000 may be grouped by classes.	$1,000,000, or a graduated scale based on total asset base.	$1,000,000.
4	269	Other Deferred Credits (Account 253).	Amounts less than $100,000 may be grouped by classes.	$1,000,000, or a graduated scale based on total asset base.	$100,000.
5	278	Other Regulatory Liabilities (Account 254).	Amounts less than $100,000 may be grouped by classes.	$1,000,000, or a graduated scale based on total asset base.	$1,000,000.
6	353	Research, Development, and Demonstration Activities.	Group items under $50,000.	Graduated scale based on total asset base.	n.a.

Commission Determination

93. We are not persuaded to adopt the alternate thresholds or graduated reporting requirements proposed by some commenters. The Commission believes that the proposed thresholds are reasonable and not unduly burdensome. The thresholds balance the burden on utilities, and, in fact, in raising the thresholds, lessen the burden while continuing to provide meaningful data to this Commission, state commissions, and customers that wish to review a utility's rates. Furthermore, the uniformity of the reporting

[58] *See* Order No. 710–A at P 7.

[59] NOPR at P 60.

[60] *See* AEP, EEI, and FirstEnergy comments.

requirement helps ensure that comparable data is available for all major utilities. Therefore, we adopt the revised reporting thresholds proposed in the NOPR[61] and reject the alternative threshold reporting levels and proposals for graduated reporting requirements.

7. Proposed Technical Corrections

94. In response to the NOI, the Commission received a number of suggested technical changes and instruction revisions. The Commission listed the suggestions that showed merit in the NOPR, Appendix C and invited comment on specific proposals. The proposals are reproduced in Appendix B to this Final Rule along with the Commission's responses. The NOPR specifically sought comment on the proposals in Appendix C, line 25 (RTO accounting on pages 310–311, 326–327, 332, 397–398), line 32 (measuring sales for resale as financial transactions, pages 310 and 326), line 34 (designating reporting hours and accounting for financial transactions, page 401A), and line 35 (utility of column (b), pages 301 and 326).[62]

Comments

95. SDG&E believes many of the proposed revisions and technical corrections are appropriate and provide needed information for rate review without imposing undue burdens on the filer.[63]

96. In regard to the proposal to measure sales for resale as financial transactions (pages 310 and 326) on line 32 of Appendix C, APPA supports providing guidelines on how to report volume information on the sales for resale and purchased power schedule on pages 310 and 326. The proposal asks the Commission to address the reporting of financial transactions; APPA believes that the Commission should also address the reporting of negative volumes on these schedules.

Commission Determination

97. The comments received did not offer specifics in response to the NOPR requests for comments on the proposals in Appendix C, line 25 (RTO accounting on pages 310–311, 326–327, 332, 397–398), line 34 (designating reporting hours and accounting for financial transactions, page 401A), or line 35 (utility of column (b), pages 301 and 326). In addition, with respect to APPA's proposal to address reporting of negative volumes, we decline to adopt such a proposal at this time; APPA has not adequately explained how negative volumes arise in purchase or sales transactions. Due to the lack of specific proposals, the Commission will not implement the remainder of these changes at this time. In addition, for Appendix C, line 32, no commenter provided a specific proposal for reporting volume information; consequently, we will not revise our reporting requirements at this time.

8. Additional Technical Revisions

98. EEI's comments include a number of additional suggested improvements, clarifications and corrections to the forms and software: (1) General—on various pages, EEI requests the Commission to ensure that all data, descriptions, and amounts roll over from one period to the next, to avoid companies having to re-enter the data; (2) General—standardize the number formats used to represent credits throughout the form—for example, on page 119, column (c), the format is ''−50,500,'' while in column (d) the format is ''(50,500);'' (3) pages 120–121—EEI requests a correction to ensure that all footnotes print to identify which column is involved when footnotes are added to columns (b) or (c); (4) pages 122a–122b and 231–EEI requests the instructions be revised to reflect Commission staff guidance that these schedules are to be presented on a year-to-date basis; (5) pages 122a–122b—EEI requests the row heights on the two pages be adjusted to be the same, making information easier to follow; (6) pages 329–330—EEI states that the page title should reference account 456.1, not 456; (7) pages 352–353—correct the printing parameters so that the dollars for line 47 print on the same page as the description for that line; (8) page 398—clarify whether a standard unit of measure should be applied to Number of Units Sold in column (e), and, if not, how dissimilar units of measure are to be totaled on line 8; and (9) pages 426–427—the Form 1 submission software (FOSS) should calculate totals for column (f) by Substation Classification.

99. In addition, EEI supplements the technical revisions proposed in the NOPR and requests that the Commission address the following issues:[64] (a) The ability to load data more cleanly into the software, including Excel data; (b) the ability to copy and paste information from Microsoft Word and other native-format documents without losing formatting such as underlines, paragraphs, and headers; (c) the ability to print preview for Notes to Financials and Important Changes pages; (d) corrections to the ''total amount'' functions in the software, in particular on pages 224, 320–323, 336, 354–355; (e) corrections to improper page references, in particular on pages with footnotes; (f) corrections to the software's cross-checking function; and (g) corrections to text on various pages of the forms, as noted in NOI comments.

Commission Determination

100. With respect to EEI's new suggestions, the Commission confirms: (1) The copy forward feature is available for many page schedules, and if additional pages need such a feature, filers may make requests to *ferconlinesupport@ferc.gov* (copying on these pages is an option and not mandated); (2) the printing of negative numbers on page 119, column (d) will be corrected; (3) the footnote printing issues on pages 120–121 will be addressed; (4) the instructions on pages 122a, 122b and 231 will be updated; (5) the row heights on pages 122a and 122b will be changed, as requested; (6) the page title on pages 329 and 330 will be corrected (consistent with page 328); and (7) printing parameters on pages 352–353 will be corrected to address text continuity. As for the two remaining suggestions from the list, we clarify: (8) that a standard unit of measure on page 398 is not appropriate, because the unit of measure should instead be that used in the filer's billing determinants;[65] and (9) consistent with EEI's request the software already permits filers to calculate totals on pages 426–427, column (f) by substation.[66]

101. With respect to EEI's request that the Commission ensure compatibility between the Form 1 reporting software and commonly used commercial products such as spreadsheet, word processing and accounting software, the

[61] Filers that use Form 1 to meet more specific reporting requirements for incentive rate treatment for construction work in progress (CWIP) or other costs must continue to meet the obligations arising with the approval of such incentive rates, despite these thresholds. *Cf., e.g., Potomac-Appalachian Transmission Highline, LLC,* 122 FERC ¶ 61,188, at P 155–56 (2008); Trans-Allegheny Interstate Line Co., 119 FERC ¶ 61,219, at P 45 (2007) (requiring reporting of financial details in Form 1 footnotes as condition of approval for CWIP rate incentive).

[62] An additional proposal concerning consistency in distinguishing delivery revenues and electricity sales (pages 300–301) has already been addressed in the discussion of Other Revenues, above.

[63] BPA and FirstEnergy also generally support the corrections.

[64] AEP supports the software improvements proposed by EEI to enable them to load data efficiently into the FERC software.

[65] To facilitate reporting, we will revise the software so that a total can be entered on line 8, columns (b) and (e), number of units, if filers wish to use a standard unit of measure (otherwise there will be no total).

[66] This feature can be accomplished by entering either ''Subtotal'' or ''Total'' as the first characters in column (a), which will result in the system calculating values for other columns, accordingly.

Commission is mindful of the continual upgrading of commercial software and strives to ensure that the Commission's forms can accommodate the changes. However, we note that several comments concerning the eForm software (FOSS) appear to be based on a misunderstanding of the software's capability. The Commission encourages filing companies to contact the Commission's Online Support (via e-mail or phone) to resolve technical issues concerning the FOSS software. Through calls to Online Support, issues may be addressed in a direct and timely manner that is specific to an individual filing company's concerns. In this manner, the Commission, the regulated entities, and the public in general will be best and most efficiently served.

102. As to the specific issues described in the comments, the Commission notes that the software incorporates the ability to import data from any spreadsheet program (including Excel or Open Office) that is able to export the data using the ''dbf'' format. Many schedules support this capability and also support (but do not require) data roll-over from past reports. If importing or data roll-over capability is desired for other pages, filing companies should contact *ferconlinesupport@ferc.gov.* In addition, the software includes the capability to import word processing files in the Word format into Form 1, Notes to the Financial Statements. It is possible compatibility issues with specific versions of word processing software (such as Microsoft Word) may result in some formatting being lost. Users experiencing technical difficulties may contact the Commission at *ferconlinesupport@ferc.gov*. The software also features print preview capability and data roll-over functions. As for corrections to the ''total amount'' functions on various pages, we have been unable to duplicate the errors referred to in the comments. If a filing company is having difficulty with a particular calculation, assistance is available by contacting *ferconlinesupport@ferc.gov*. Finally, steps have been taken to include data cross-checking in the 2008 Form 1 submission software, and we will make corrections to the text on various pages of the forms to address EEI's suggested editorial changes.[67]

E. Miscellaneous

1. Retaining Form 3–Q

103. In the NOPR, we rejected requests that the Commission eliminate Form 3–Q as being unnecessary. The Commission believes that the quarterly reports are important because they allow more timely evaluations of existing rates and improve the transparency and currency of financial information.

Comments

104. AEP, EEI, and Nevada Companies suggest that the Commission reconsider whether the burden of completing the Form 3–Q is warranted when compared to the limited value of data it provides.

Commission Determination

105. We decline to adopt this change for the reasons stated in the NOPR: [68]

> The Commission believes that the increased frequency of financial information provided in Form 3–Q is important. The quarterly reports allow for more timely evaluations of existing rates and improve the transparency and currency of financial information submitted to the Commission.

106. The comments provide no compelling reason to eliminate Form 3–Q.

2. Confidentiality Concerns

107. In response to NOI comments, the NOPR rejected calls that certain financial data should be considered confidential because of concerns raised regarding competitive risks and harm to critical infrastructure. The NOPR affirmed the Commission's commitment to maintaining the public availability of financial data filed in Form 1 and other reports and found that additional precautions or protection of financial data are not necessary.

Comments

108. APPA commends the Commission for continuing to improve its collection of financial data and for its commitment to maintaining the public availability of the data. AEP recommends the Commission reconsider its position and cease to require the release of what it characterizes as competitively sensitive commercial information to potential competitors that could disadvantage sellers in competitive markets.

109. EEI encourages the Commission to protect commercially sensitive information, in the interest of promoting fair competition and the development of robust competitive markets. EEI further encourages the Commission to reconsider its handling of commercially sensitive information in the financial forms, to ensure that information is not released at a plant or company level if such information may harm companies, either in their competition with others or in their negotiations with suppliers. In particular, EEI requests, as it has done in previous efforts to revise the reporting requirements that the Commission cease releasing in discrete form individual generating plant costs and operating performance information, and instead release such information only in aggregated form that, according to EEI, avoids commercial harm.

Commission Determination

110. As stated in the NOPR and elsewhere, the Commission remains committed to the public availability of cost-of-service data for public utilities. Since 1937, Form 1 data have provided a critical component of the Commission's regulatory program and that of its predecessor, the Federal Power Commission.[69] While the electricity market is changing, regulated public utilities still provide jurisdictional power and transmission services for which information is needed in connection with the Commission fulfilling its statutory responsibilities. Because transmission service is a critical component in electricity service and most transmission rates are cost-based, Form 1 data are critical to evaluating the underlying costs of providing transmission service and the resulting rates. In addition, Form 1 data provide the basis for many rates for generation service (both cost-based and market-based), which may be determined on a unit by unit basis. Making this cost data publicly available provides customers with a means to monitor the reasonableness of their rates, and thus assists the Commission's efforts to ensure that rates remain just and reasonable. The Commission also has previously reviewed and rejected suggestions that it should adopt non-public status for Form 1 data.[70] Consistent with our long-standing precedent, and in light of the commenters' failure to convince us

[67] Absent reference to particular pages, the Commission is unable to address EEI's remaining request that the Commission correct unspecified improper page references and footnotes.

[68] NOPR at P 61.

[69] *See generally Connecticut Light and Power Co.,* 2 FPC 853 (1944).

[70] *See PECO Energy Co., et al.*, 88 FERC ¶ 61,330 (1999); *Consolidated Edison Co.,* 72 FERC ¶ 61,184 (1995). *See also Alabama Power Company* v. *FPC,* 511 F.2d 383, 390–91 (DC Cir. 1974) (upholding fuel purchases reporting requirement, and rejecting claims that disclosure would lead to bargaining disadvantages in future fuel contract negotiations as outweighed by benefits of disclosure).

otherwise, we decline to adopt non-public status for such data here.

3. Requests To Reconsider Rejected Revisions

111. Duke suggests that the Commission misconstrued its proposal in Docket No. RM07–9–000, proposing to eliminate the requirement to report executive officers' salaries on page 104 and argues that the information is not relevant and may be obtained elsewhere.[71] Duke also renews its objection that the requirement to footnote amounts reported in pages 328–330, column (m), is unduly burdensome, because the detail largely concerns ancillary services data and filers must insert repetitive footnotes that do little to further the user's understanding of the charges.

112. Further, Duke believes the Commission misinterpreted Duke's suggested revisions related to pages 422–425. Duke does not request eliminating the pages, but states rather that it is proposing a means by which the burden on the filer could be reduced, without diminishing the usefulness of the data reported. Duke believes that reporting miles of transmission lines by state and legal entity, as well as the totals of the different type of supporting structures by voltage, would be sufficient and far less burdensome for filers than current practice. Duke questions the claim, cited in the NOPR, stating that pages 422–425 (as well as pages 426 and 427) provide valuable information on transmission lines and substations that allows commenters to track rate base amounts on a facility-by-facility basis. Duke disagrees and questions the necessity of the ''to'' and ''from'' level of detail.[72] According to Duke, the necessary data to calculate transmission rates for RTO members that file Form 1 is already largely available in various RTO filings or available upon request. Second, Duke states that the ''to'' and ''from'' level of detail for filers that are not members of RTOs is insignificant because transmission rates for these filers are based on average system cost.

113. Duke proposes that the information contained on pages 426 and 427 be updated in its entirety every three years, and that in all other years a filer only be required to report additions, retirements and changes to the substations. Duke believes that typically there are few changes year-by-year to the amount of information presented on pages 426 and 427. According to Duke, this change would be beneficial not only to filers, but also to users because the changes would be more apparent to users.

114. APPA supports the Commission's determination that pages 422–423 and 426–427 should remain in Form 1. BPA states that Form 1 should contain more information rather than less, and that no accounts or level of detail should be removed from the current Form 1 requirements.

Commission Determination

115. The Commission affirms its decision to retain the existing requirements. The information is useful to the Commission's oversight, and is relied upon for the monitoring, review and modification of rates. The Commission disagrees that alternate approaches of seeking the information, *i.e.*, on request or seeking comparable information in various rate, tariff and informational filings, are a substitute for consistent and uniform reporting of the data in Form 1. The Form 1 format ensures that the data is available, is consistent from year to year and is comparable among filing utilities. In addition, this information is valuable because of the increasing demand, and accompanying scrutiny, being placed on the transmission grid; there is a continuing need for information to assess changes and improvements (both existing and new) to transmission infrastructure.

4. Requests for Additional Cost Data

116. In the NOPR, we rejected requests for the collection of additional Form 1 data, finding that additional detail may be unnecessary. In light of the comments received and given the Commission's experience with reporting requirements, the Commission determined that wholesale changes to Form 1 were unnecessary especially in light of the targeted changes proposed. Therefore, the NOPR did not propose that filers provide a cost and revenue study or the type of detailed information needed in a rate case, or detailed information on pensions and other employment benefits.[73]

Comments

a. Pension Information

117. The New York Commission renews its request that the Commission require electric utilities to file information regarding pensions and other employee benefits in order to assess whether rates are just and reasonable, and states that this need outweighs the burden of imposing an incremental reporting requirement upon utilities. The New York Commission indicates that the Commission's proposal appears inconsistent with its position in Order No. 710.

b. Transmission Investment

118. The Michigan Commission requests that the Commission clarify whether additional detail on new transmission plant in service is required. TAPS proposes that the Commission require subdivision of account 353 in order to distinguish account 353 costs associated with the transmission and generator step-up functions. This requirement would apply irrespective of whether a Form 1 filing utility uses a formula rate. TAPS states that for the Form 1 to work as a basis for a preliminary rate assessment and serve its other rate-regulatory purposes, it should break out the costs of facilities associated with generator step-up transformation and report any methodology used to divide account 353 between the transformation and transmission functions. According to TAPS, the Commission's accounting practices should reflect rate functionalization for both stated and formulaic rates so that customers and regulators may monitor rates and understand how the utility functionalizes costs.

Commission Determination

119. Contrary to the New York Commission's view, our decision to rely on existing reporting requirements with respect to pension information in this proceeding is not inconsistent with our determination in Order No. 710. In that proceeding, which adopted changes to our reporting requirements in Form 2 for gas pipelines, we found that insufficient information was available because details about the types and costs of employee benefits were not readily available due to the pipelines' participation in multi-employer benefit plans in which they are assigned a portion of the total cost and there was flexibility in the way in which information was described in a footnote disclosure.[74] However, in contrast, there was no evidence of a widespread impediment to understanding public utilities' pension obligations. Therefore, we will not impose similar reporting requirements here, but instead will rely on our existing reporting requirements.

[71] *See* NOPR at P 14 (summarizing Duke's comments responding to the NOI).

[72] Duke comments at 5. Pages 422–425, col. (a) and (b) provide information on transmission lines (132 kV and above), which are designated as running ''from'' location A ''to'' their destination at location B. Transmission lines below 132 kV are grouped together by voltage.

[73] NOPR at P 35.

[74] Order No. 710 at P 38.

120. As stated in the NOPR, we are not persuaded to expand the scope of this proceeding, as would be necessary to grant TAPS' request to revise our accounting requirements and provide in this Final Rule the additional information requested. This determination is consistent with our holdings elsewhere in this Final Rule with respect to requests for additional information related to formula rates and, in particular, transmission investment.

F. Reporting Burden

121. In the NOPR, the Commission estimated that the proposed new affiliate transaction and other information will take respondents 14 hours to collect and report on an average annual basis per respondent.[75]

Comments

122. EEI comments that, recognizing that reporting does involve substantial costs, the Paperwork Reduction Act (PRA) requires federal agencies to strive to minimize the reporting burden and avoid duplicative reporting requirements.[76] In prior triennial reviews, EEI has asked the Commission to review the Forms 1, 1–F, and 3–Q as well as other FERC forms to determine if all the information contained in the forms is truly needed and whether it is needed in as much detail.[77] EEI reiterates that general request here and encourages the Commission to minimize the reporting burden to the maximum extent possible.

123. Duke estimates a burden greater than 14 hours to meet the requirements associated with the proposed Form 1, page 429 alone; similarly, EEI suggests that compiling the proposed affiliate transaction information will take longer than 14 hours.[78] MidAmerican suggests that the proposed Form 1 affiliate transaction reporting requirement is duplicative of existing federal and state affiliate reporting requirements.

124. SDG&E on the other hand believes that the proposed revisions to the financial reporting obligations in the NOPR generally are appropriately balanced to fulfill the Commission's stated goal of obtaining necessary information without imposing undue burdens on the filer.

Commission Determination

125. The Commission's estimate of the reporting burden refers to the Commission's estimate of the additional amount of time needed to comply with the Form 1 revisions on an annual basis, over and above the time needed to prepare the Form 1 under existing requirements. Thus, while the Commission is sensitive to filing parties' individual expectations that becoming familiar with the new reporting requirements, compiling and reporting certain information may initially take more time than the annual estimate, these parties will not need to invest a similar effort in subsequent years. Furthermore, the revisions adopted in this Final Rule are not extensive, and largely consist of material that is already required to be maintained for other purposes. Therefore, although the initial preparation to meet new reporting requirements established in this Final Rule may be greater, the Commission believes that the total increase in the time to meet all of the Form 1 requirements, existing as well as those adopted in this rule, is not unduly burdensome. Furthermore, the Final Rule also relieves some parties of their reporting obligations, and lessens the reporting burden for all parties through the increase in the threshold reporting requirements for certain items.

126. FirstEnergy, AEP, MidAmerican, and SDG&E comment on the estimated burden of the affiliate transaction reporting requirement; however, they do not offer an alternative estimate. Likewise, International Transmission and MidAmerican challenge the total 14 hour estimate but fail to offer alternative estimated burden hours.

127. While Duke cites how they would have to review 187,700 lines of accounting related to transactions for its four respondent companies, Duke does not specify what such a ''review'' would entail, nor what the estimated burden would be. Nevada Companies argue that 40 hours per quarter would be needed or 160 hours annually for the affiliate transaction reporting requirement. EEI states it would take anywhere from 100 to 300 hours, according to its members, to fulfill the affiliated transaction requirement.

128. In response to Nevada Companies' burden estimate, the Commission notes that the Final Rule only requires a reporting of transactions on an annual basis, not quarterly. Therefore, we believe that Nevada Companies' have overestimated the amount of time needed to comply with the requirements. In addition, EEI's estimate likewise appears to be excessive and does not take into account clarifications made in this Final Rule. EEI makes several assumptions that have been resolved in a manner that would significantly decrease its estimate, including: (1) Similar to Nevada Companies, EEI assumes that the revised reporting requirements are to be met on a quarterly basis, while the Final Rule largely imposes annual reporting requirements;[79] (2) EEI assumes that power transactions are included, while the Final Rule clarifies, that power transactions are excluded from the new page 429 affiliated transaction reporting requirement; [80] (3) EEI requests reporting by service type category rather than by transaction; [81] and (4) EEI's estimate does not account for the $250,000 affiliate transaction reporting threshold of transaction/service type adopted in response to comments. In response to concerns raised by the commenters, however, the Commission has adjusted its estimate as reflected below.

VI. Information Collection Statement

129. The collections of information contained in this Final Rule have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995; [82] the Commission is revising the reporting requirements for public utilities and licensees (and for Form 3–Q, also natural gas companies) contained in the above financial and operational information collections.

Title: FERC Form No. 1, ''Annual Report of Major Electric Utilities, Licensees, and Others''; FERC Form No. 1–F, ''Annual Report for Nonmajor Public Utilities and Licensees; FERC Form No. 3–Q, ''Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies.''

Action: Final Rule.

OMB Control Nos. 1902–0021 (Form 1); 1902–0029 (Form 1–F); 1902–0205 (Form 3–Q).

Respondents: Businesses or other for profit.

Frequency of responses: Annually and quarterly.

Necessity of the information: The information collected under the requirements of Part 141 is essential to the Commission's fulfilling its statutory responsibilities under the FPA. The information collected is used in

[75] NOPR at P 66.

[76] EEI cites 44 U.S.C. 3501, *et seq.*

[77] EEI states that the Paperwork Reduction Act requires each agency to undertake a triennial review in consultation with the Office of Management and Budget (OMB) to demonstrate that information collections are as reasonable and streamlined as possible. EEI comments at 2–3.

[78] EEI estimates that the proposed affiliate transaction schedule alone would require on the order of 100 to 300 hours per company to compile in the proposed format. AEP similarly argues that the affiliate transaction reporting would be voluminous and burdensome.

[79] *See* EEI comments at 6.

[80] EEI comments at 10.

[81] The Commission does not object so long as the service is ongoing, and is not undertaken in response to a particular, non-recurring event.

[82] 44 U.S.C. 3507(d).

ratemaking and rate monitoring, for oversight of company finances and operations, and for adjudication and regulation. The data currently reported in the forms lack the information that would allow the Commission to assess and keep pace with changes in the industry and the changes adopted here better permit the Commission and the public to evaluate the filers' jurisdictional rates and operations. The additional information to be collected by the Final Rule will increase the forms' usefulness to both the Commission and the public. Without this information, it would be more difficult for the Commission and the public to assess costs and operations, and thereby ensure that rates are just and reasonable.

Burden Statement: In light of comments from larger transmission-owning public utilities that it may take additional time to comply with the new affiliate transaction reporting requirement added to Form 1 in this Final Rule, the Commission is revising its information collection estimates. Taking into account the comments received, the Commission estimates that on average it will take large respondents 28 hours annually to comply with the requirements adopted in the Final Rule and smaller respondents 11 hours. There are an estimated 211 major and 4 nonmajor electric utilities that will be affected by the changes adopted for Form 1 in the Final Rule, for a total of 215 respondents.[83] Larger utilities with more affiliate transactions may face a greater burden in reporting affiliate transaction, other revenues and formula rate information. However, the Commission believes that most of the additional information required to be reported is already maintained by the utilities.

The Commission's estimate has taken into account the commenters' proposed burden estimates. However, the Commission has adjusted these numbers to reflect the clarifications made in the Final Rule. Thus, commenters' proposed affiliated transaction burden estimates of 100 to 300 hours are better considered to be 25 to 75 hours, to account for the fact that quarterly reporting is not required. Furthermore, because the Final Rule does not require reporting of affiliate power transactions on new page 429, the affiliate transaction reporting estimate was halved to reflect the Commission's estimate of the transactions to be reported. In addition, the Final Rule adopts the $250,000 threshold for affiliate transaction reporting, which will result in a further reduction of the initial estimates. The Commission finds that a range of 8 to 20 hours is appropriate to estimate the annual burden of affiliate transaction reporting, and, based on its understanding that smaller entities will face a lower burden, estimates the typical burden to prepare the affiliate transaction schedule to be 12 hours. Assuming a similar burden for the formula rate footnote disclosure, the Commission estimates the total burden, including other reporting, for the revised Form 1 reporting requirements adopted in this Final Rule to be 25 hours. The Commission adopts the Form 3–Q burden of one hour as proposed in the NOPR, since neither the formula rate or affiliate transaction reporting requirements are adopted for Form 3–Q.

The resulting total hours for the following collections of information will be:

Data collection form	Number of respondents	Change in the number of hours per respondent	Filing periods	Change in the total annual hours
(a)	(b)	(c)	(d)	(e) = (b) × (c) × (d)
FERC Form 1	211	25	1	5,275
FERC Form 3–Q	199	1	3	597
FERC Form 1–F	4	11	1	44
Relevant Totals				5,916

Total Annual Hours for Collection: (Est. Reporting + Recordkeeping (if appropriate)) = 5,916.

Information Collection Costs: The Commission estimates the costs to comply with these requirements as follows:

The Commission estimates that the additional hours to complete the additional reporting requirements will be divided among a utility's accounting and internal and outside legal services and support staff. The total annualized costs for the information collection is $538,356. This number is reached by multiplying the total hours to prepare responses (total: 5,916) by an hourly wage estimate of $91 (an average that incorporates senior accountant ($50), financial analyst ($40), support staff rates ($25) and legal ($250)) (salary information source: Bureau of Labor Statistics and market research). These costs will be spread over 215 utilities, however. On balance, the Commission finds that the collection costs will not be unduly burdensome.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, *phone:* (202) 502–8415, *fax:* (202) 273–0873, *e-mail: Michael.Miller@ferc.gov*]. Comments concerning the collection of information and the associated burden estimates, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7345; fax (202) 395–7285].

VII. Environmental Analysis

130. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[84] No environmental consideration is needed for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[85] or that addresses accounting.[86] This Final Rule involves information gathering, analysis, and

[83] These numbers are based on the most recent filings.

[84] *See Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[85] *See* 18 CFR 380.4(a)(5).

[86] *See* 18 CFR 380.4(a)(16).

dissemination, and accounting. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required.

VIII. Regulatory Flexibility Act

131. The Regulatory Flexibility Act of 1980 (RFA) [87] requires rulemakings to contain either a description or analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[88] Most utilities regulated by the Commission do not fall within the RFA's definition of a small entity.[89] Thus, most utilities to which the rules adopted herein apply would not fall within the RFA's definition of small entities. As noted above, the Commission has also sought to alleviate the burden imposed on small entities by (a) eliminating a non-jurisdictional utility reporting requirement; (b) accommodating non-calendar fiscal year accounting; and (c) increasing the minimum threshold reporting levels for certain line-item information. In creating the Form 1 and the Form 1–F, moreover, the Commission established two different reporting thresholds so that smaller utilities would not be encumbered with having to provide the information necessary to comply with the Form 1. Consequently, the Final Rule adopted here will not have a significant economic effect on a substantial number of small entities.

IX. Document Availability

132. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's home page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

133. From the Commission's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

134. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail at *public.referenceroom@ferc.gov*.

X. Effective Date and Congressional Notification

135. These regulations are effective for calendar year 2009, *i.e.*, as of January 1, 2009. The first report, the Form 3–Q for the first quarter of 2009, will be due in May 2009. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 41

Administrative practice and procedures, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 141

Electric utilities and licensees, Reporting requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends parts 41 and 141 of Title 18 of the *Code of Federal Regulations*, as set forth below:

PART 41—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 41.11 is revised to read as follows:

§ 41.11 Report of certification.

Each Major and Nonmajor (including those companies classified as nonoperating under Part 101, General Instruction 1(A)(3) of this chapter) public utility or licensee operating on a calendar year and not classified as Class C or Class D prior to January 1, 1984 must file with the Commission a letter or report of the independent accountant certifying approval, together with or within 30 days after the filing of the Annual Report, Form No. 1, covering the subjects and in the form prescribed in the General Instructions of the Annual Report. For such utility or licensee operating on a non-calendar fiscal year, the letter or report of the independent accountant certifying approval must be filed within 150 days of the close of the company's fiscal year; the letter or report must also identify which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission will not be bound by a certification of compliance made by an independent accountant pursuant to this paragraph.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 3. The authority citation for part 141 is revised to read as follows:

Authority: 15 U.S.C. 79; 15 U.S.C. 717–717z; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. In § 141.1, paragraph (b)(1)(i) is revised to read as follows:

§ 141.1 FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

* * * * *

(b) *Filing requirements*—(1) *Who must file*—(i) *Generally*. Each Major and each Nonoperating (formerly designated as Major) electric utility (as defined in part 101 of Subchapter C of this chapter) and each licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 796), including any agency, authority or other legal entity or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service equal to Major as defined above, must prepare and file electronically with the Commission the FERC Form 1 pursuant to the General Instructions as provided in that form.

* * * * *

■ 5. In § 141.400, paragraph (b)(1)(i) is revised to read as follows:

§ 141.400 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

* * * * *

(b) *Filing requirements*—(1) *Who must file*—(i) *Generally*. Each electric utility and each Nonoperating (formerly designated as Major or Nonmajor) electric utility (as defined in part 101 of subchapter C of this chapter) and other entity, *i.e.*, each corporation, person, or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 *et seq.*), including any agency or instrumentality engaged in generation,

[87] 5 U.S.C. 601–12.

[88] *Id.*

[89] 5 U.S.C. 601(3).

transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service must prepare and file with the Commission FERC Form No. 3–Q pursuant to the General Instructions set out in that form.

* * * * *

BILLING CODE 6717–01–P

Note: The following Appendices will not be published in the Code of Federal Regulations.

Appendix A – Revised Form 1 Pages.

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

LIST OF SCHEDULES (Electric Utility)

Enter in column (c) the terms "none", "not applicable", or "NA", as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none", "not applicable", or "NA".

Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)
1	General Information	101	
2	Control Over Respondent	102	
3	Corporations Controlled by Respondent	103	
4	Officers	104	
5	Directors	105	
6	Information on Formula Rates	106	
7	Important Changes During the Year	108-109	
8	Comparative Balance Sheet	110-113	
9	Statement of Income for the Year	114-117	
10	Statement of Retained Earnings for the Year	118-119	
11	Statement of Cash Flows	120-121	
12	Notes to Financial Statements	122-123	
13	Statement of Accum Comp Income, Comp Income, and Hedging Activities	122(a)(b)	
14	Summary of Utility Plant and Accumulated Provisions for Dep, Amort and Dep	200-201	
15	Nuclear Fuel Materials	202-203	
16	Electric Plant in Service	204-207	
17	Electric Plant Leased to Others	213	
18	Electric Plant Held for Future Use	214	
19	Construction Work in Progress-Electric	216	
20	Accumulated Provision for Depreciation of Electric Utility Plant	219	
21	Investment of Subsidiary Companies	224-225	
22	Materials and Supplies	227	
23	Allowances	228-229	
24	Extraordinary Property Losses	230	
25	Unrecovered Plant and Regulatory Study Costs	230	
26	Transmission Service and Generation Interconnection Study Costs	231	
27	Other Regulatory Assets	232	
28	Miscellaneous Deferred Debits	233	
29	Accumulated Deferred Income Taxes	234	
30	Capital Stock	250-251	
31	Other Paid-in Capital	253	
32	Capital Stock Expense	254	
33	Long-Term Debt	256-257	
34	Reconciliation of Reported Net Income with Taxable Inc for Fed Inc Tax	261	
35	Taxes Accrued, Prepaid and Charged During the Year	262-263	
36	Accumulated Deferred Investment Tax Credits	266-267	
37	Other Deferred Credits	269	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

LIST OF SCHEDULES (Electric Utility)

Enter in column (c) the terms "none", "not applicable", or "NA", as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none", "not applicable", or "NA".

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of Year/Qtr

INFORMATION ON FORMULA RATES

Does the respondent have formula rates?	☐ Yes ☐ No

1. Please list the Commission accepted formula rates including FERC Rate Schedule or Tariff Number and FERC proceeding (i.e., Docket No.) accepting the rate(s) or changes in the accepted rate.

FERC Rate Schedule or Tariff Number	FERC Proceeding

Does the respondent file with the Commission annual (or more frequent) filings containing the inputs to the formula rate(s)?	☐ Yes ☐ No

2. If yes, provide a listing of such filings as contained on the Commission's eLibrary Web site

Accession No.	Document Date/Filed Date	Docket No.	Description	Formula Rate FERC Rate Schedule Number or Tariff Number

1. If a respondent does not submit such filings then indicate in a footnote to the applicable Form 1 schedule where formula rate inputs differ from amounts reported in the Form 1.
2. The footnote should provide a narrative description explaining how the "rate" (or billing) was derived if different from the reported amount in the Form 1.
3. The footnote should explain amounts excluded from the ratebase or where labor or other allocation factors, operating expenses, or other items impacting formula rate inputs differ from amounts reported in Form 1 schedule amounts.
4. Where the Commission has provided guidance on formula rate inputs, the specific proceeding should be noted in the footnote.

Page No(s).	Schedule	Column	Line No

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
1	**UTILITY PLANT**			
2	Utility Plant (101-106, 114)	200-201		
3	Construction Work in Progress (107)	200-201		
4	TOTAL Utility Plant (Enter Total of lines 2 and 3)			
5	(Less) Accum. Prov. for Depr. Amort. Depl. (108, 110, 111, 115)	200-201		
6	Net Utility Plant (Enter Total of line 4 less 5			
7	Nuclear Fuel in Process of Ref., Conv., Enrich., and Fab. (120.1)	202-203		
8	Nuclear Fuel Materials and Assemblies-Stock Account (120.2)			
9	Nuclear Fuel Assemblies in Reactor (120.3)			
10	Spent Nuclear Fuel (120.4)			
11	Nuclear Fuel Under Capital Leases (120.6)			
12	(Less) Accum. Prov. for Amort. of Nucl. Fuel Assemblies (120.5)	202-203		
13	Net Nuclear Fuel (Enter Total of lines 7-11 less 12)			
14	Net Utility Plant (Enter Total of lines 6 and 13)			
15	Utility Plant Adjustments (116)			
16	Gas Stored Underground - Noncurrent (117)			
17	**OTHER PROPERTY AND INVESTMENTS**			
18	Nonutility Property (121)			
19	(Less) Accum. Prov. for Depr. and Amort. (122)			
20	Investments in Associated Companies (123)			
21	Investment in Subsidiary Companies (123.1)	224-225		
22	(For Cost of Account 123.1, See Footnote Page 224, line 42)			
23	Noncurrent Portion of Allowances	228-229		
24	Other Investments (124)			
25	Sinking Funds (125			
26	Depreciation Fund (126)			
27	Amortization Fund - Federal (127)			
28	Other Special Funds (128)			
29	Special Funds (Non Major Only) (129)			
30	Long-Term Portion of Derivative Assets (175)			
31	Long-Term Portion of Derivative Assets – Hedges (176)			
32	TOTAL Other Property and Investments (Lines 18-21 and 23-31)			
33	**CURRENT AND ACCRUED ASSETS**			
34	Cash and Working Funds (Non-major Only) (130)			
35	Cash (131)			
36	Special Deposits (132-134)			
37	Working Fund (135)			
38	Temporary Cash Investments (136)			
39	Notes Receivable (141)			
40	Customer Accounts Receivable (142)			
41	Other Accounts Receivable (143)			
42	(Less) Accum. Prov. for Uncollectible Acct.-Credit (144)			
43	Notes Receivable from Associated Companies (145)			
44	Accounts Receivable from Assoc. Companies (146)			
45	Fuel Stock (151)	227		
46	Fuel Stock Expenses Undistributed (152)	227		
47	Residuals (Elec) and Extracted Products (153)	227		
48	Plant Materials and Operating Supplies (154)	227		
49	Merchandise (155)	227		
50	Other Materials and Supplies (156)	227		
51	Nuclear Materials Held for Sale (157)	202-203/307		
52	Allowances (158.1 and 158.2)	228-229		

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COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
53	(Less) Noncurrent Portion of Allowances			
54	Stores Expense Undistributed (163)	227		
53	Gas Stored Underground - Current (164.1)			
56	Liquefied Natural Gas Stored and Held for Processing (164.2-164.3)			
57	Prepayments (165)			
58	Advances for Gas (166-167)			
59	Interest and Dividends Receivable (171)			
60	Rents Receivable (172)			
61	Accrued Utility Revenues (173)			
62	Miscellaneous Current and Accrued Assets (174)			
63	Derivative Instrument Assets (175)			
64	(Less) Long-Term Portion of Derivative Instrument Assets (175)			
65	Derivative Instrument Assets - Hedges (176)			
66	(Less) Long-Term Portion of Derivative Instrument Assets - Hedges (176)			
67	Total Current and Accrued Assets (Lines 34 through 66)			
68	**DEFERRED DEBITS**			
69	Unamortized Debt Expenses (181)			
70	Extraordinary Property Losses (182.1)	230a		
71	Unrecovered Plant and Regulatory Study Costs (182.2)	230b		
72	Other Regulatory Assets (182.3)	232		
73	Prelim. Survey and Investigation Charges (Electric) (183)			
74	Preliminary Natural Gas Survey and Investigation Charges 183.1)			
75	Other Preliminary Survey and Investigation Charges (183.2)			
76	Clearing Accounts (184)			
77	Temporary Facilities (185)			
78	Miscellaneous Deferred Debits (186	233		
79	Def. Losses from Disposition of Utility Plt. (187)			
80	Research, Devel. and Demonstration Expend. (188)	352-353		
81	Unamortized Loss on Reaquired Debt (189)			
82	Accumulated Deferred Income Taxes (190)	234		
83	Unrecovered Purchased Gas Costs (191)			
84	Total Deferred Debits (lines 69 through 83)			
85	TOTAL ASSETS (lines 14-16, 32, 67, and 84)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
1	**PROPRIETARY CAPITAL**			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)			
5	Stock Liability for Conversion (203, 206)			
6	Premium on Capital Stock (207)			
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254b		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reaquired Capital Stock (217)	250-251		
14	Noncorporate Proprietorship (Non-major only) (218)			
15	Accumulated Other Comprehensive Income (219)	122(a)(b)		
16	Total Proprietary Capital (lines 2 through 15)			
17	**LONG-TERM DEBT**			
18	Bonds (221)	256-257		
19	(Less) Reaquired Bonds (222)	256-257		
20	Advances from Associated Companies (223)	256-257		
21	Other Long-Term Debt (224	256-257		
22	Unamortized Premium on Long-Term Debt (225)			
23	(Less) Unamortized Discount on Long-Term Debt-Debit (226)			
24	Total Long-Term Debt (lines 18 through 23)			
25	**OTHER NONCURRENT LIABILITIES**			
26	Obligations Under Capital Leases - Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228.1)			
28	Accumulated Provision for Injuries and Damages (228.2)			
29	Accumulated Provision for Pensions and Benefits (228.3)			
30	Accumulated Miscellaneous Operating Provisions (228.4)			
31	Accumulated Provision for Rate Refunds (229)			
32	Long-Term Portion of Derivative Instrument Liabilities			
33	Long-Term Portion of Derivative Instrument Liabilities - Hedges			
34	Asset Retirement Obligations (230)			
35	Total Other Noncurrent Liabilities (lines 26 through 34)			
36	**CURRENT AND ACCRUED LIABILITIES**			
37	Notes Payable (231)			
38	Accounts Payable (232)			
39	Notes Payable to Associated Companies (233)			
40	Accounts Payable to Associated Companies (234)			
41	Customer Deposits (235)			
42	Taxes Accrued (236)	262-263		
43	Interest Accrued (237)			
44	Dividends Declared (238)			
45	Matured Long-Term Debt (239)			

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STATEMENT OF INCOME

Quarterly

1. Report in column (c) the current year to date balance. Column (c) equals the total of adding the data in column (g) plus the data in column (i) plus the data in column (k). Report in column (d) similar data for the previous year. This information is reported in the annual filing only.
2. Enter in column (e) the balance for the reporting quarter and in column (f) the balance for the same three month period for the prior year.
3. Report in column (g) the quarter to date amounts for electric utility function; in column (i) the quarter to date amounts for gas utility, and in column (k) the quarter to date amounts for other utility function for the current year quarter.
4. Report in column (h) the quarter to date amounts for electric utility function; in column (j) the quarter to date amounts for gas utility, and in column (l) the quarter to date amounts for other utility function for the prior year quarter.
5. If additional columns are needed, place them in a footnote.

Annual or Quarterly if applicable

6. Do not report fourth quarter data in columns (e) and (f).
7. Report amounts for accounts 412 and 413, Revenues and Expenses from Utility Plant Leased to Others, in another utility column in a similar manner to a utility department. Spread the amount(s) over lines 2 thru 26 as appropriate. Include these amounts in columns (c) and (d) totals.
8. Report amounts in accountant 414, Other Utility Operating Income, in the same manner as accounts 412 and 413 above.
9. Report data for lines 8, 10, and 11 for Natural Gas companies using accountants 404.1, 404.2, 404.3, 407.1, and 407.2.

Line No.	Title of Account (a)	(Ref.) Page No. (b)	Total Current Year to Date Balance for Quarter/Year (c)	Total Prior Year to Date Balance for Quarter/Year (d)	Current 3 months Ended Quarterly Only No 4th Quarter (e)	Prior 3 Months Ended Quarterly Only No 4th Quarter (f)
1	Utility Operating Income					
2	Operating Revenues (400)					
3	Operating Expenses					
4	Operation Expenses (401)					
5	Maintenance Expenses (402)					
6	Depreciation Expense (403)					
7	Depreciation Expense for Asset Retirement Costs (403.1)					
8	Amort. and Depl. of Utility Plant (404-405)					
9	Amort. of Utility Plant Acq. Adj. (406)					
10	Amort. Property Losses, Unrecov. Plant and Regulatory Study Costs (407)					
11	Amort. of Conversion Expenses (407)					
12	Regulatory Debits (407.3)					
13	(Less) Regulatory Credits (407.4)					
14	Taxes Other Than Income Taxes (408.1)					
15	Income Taxes - Federal (409.1)					
16	- Other (409.1)					
17	Provision for Deferred Income Taxes (410.1)					
18	(Less) Provision for Deferred Income Taxes-Cr. (411.1)					
19	Investment Tax Credit Adj. - Net (411.4)					
20	(Less) Gains from Disp. of Utility Plant (411.6)					
21	Losses from Disp. of Utility Plant (411.7)					
22	Losses from Disposition of Allowances (411.9)					
23	Losses from Disposition of Allowances (411.9)					
24	Accretion Expense (411.10)					
25	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 24)					
26	Net Util Oper Inc (Enter Tot line 2 less 25) Carry to Pg117,line 27					

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STATEMENT OF INCOME FOR THE YEAR (continued)

Line No.	Title of Account (a)	(Ref.) Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)	Current 3 months Ended Quarterly Only No 4th Quarter (e)	Prior 3 Months Ended Quarterly Only No 4th Quarter (f)
27	Net Utility Operating Income (Carried forward from page 114)					
28	Other Income and Deductions					
29	Other Income					
30	Nonutilty Operating Income					
31	Revenues From Merchandising, Jobbing and Contract Work (415)					
32	(Less) Costs and Exp. of Merchandising, Job. and Contract Work (416)					
33	Revenues From Nonutility Operations (417)					
34	(Less) Expenses of Nonutility Operations (417.1)					
35	Nonoperating Rental Income (418)					
36	Equity in Earnings of Subsidiary Companies (418.1)	119				
37	Interest and Dividend Income (419)					
38	Allowance for Other Funds Used During Construction (419.1)					
39	Miscellaneous Nonoperating Income (421)					
40	Gain on Disposition of Property (421.1)					
41	TOTAL Other Income (Enter Total of lines 31 thru 40)					
42	Other Income Deductions					
43	Loss on Disposition of Property (421.2)					
44	Miscellaneous Amortization (425)					
45	Donations (426.1)					
46	Life Insurance (426.2)					
47	Penalties (426.3)					
48	Exp. for Certain Civic, Political and Related Activities (426.4)					
49	Other Deductions (426.5)					
50	TOTAL Other Income Deductions (Total of lines 43 thru 49)					
51	Taxes Applic. to Other Income and Deductions					
52	Taxes Other Than Income Taxes (408.2)	262-263				
53	Income Taxes-Federal (409.2)	262-263				
54	Income Taxes-Other (409.2)	262-263				
55	Provision for Deferred Inc. Taxes (410.2)	234,272-277				
56	(Less) Provision for Deferred Income Taxes-Cr. (411.2)	234,272-277				
57	Investment Tax Credit Adj.-Net (411.5)					
58	(Less) Investment Tax Credits (420)					
59	TOTAL Taxes on Other Income and Deductions (Total of lines 52-58)					
60	Net Other Income and Deductions (Total of lines 41, 50, 59)					
61	Interest Charges					
62	Interest on Long-Term Debt (427)					
63	Amort. of Debt Disc. and Expense (428)					
64	Amortization of Loss on Reaquired Debt (428.1)					
65	(Less) Amort. of Premium on Debt-Credit (429)					
66	(Less) Amortization of Gain on Reaquired Debt-Credit (429.1)					
67	Interest on Debt to Assoc. Companies (430)					
68	Other Interest Expense (431)					
69	(Less) Allowance for Borrowed Funds Used During Construction-Cr. (432)					
70	Net Interest Charges (Total of lines 62 thru 69)					
71	Income Before Extraordinary Items (Total of lines 27, 60 and 70)					
72	Extraordinary Items					
73	Extraordinary Income (434)					
74	(Less) Extraordinary Deductions (435)					
75	Net Extraordinary Items (Total of line 73 less line 74)					
76	Income Taxes-Federal and Other (409.3)	262-263				
77	Extraordinary Items After Taxes (line 75 less line 76)					
78	Net Income (Total of line 71 and 77)					

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STATEMENTS OF ACCUMULATED COMPREHENSIVE INCOME, COMPREHENSIVE INCOME, AND HEDGING ACTIVITIES

1. Report in columns (b), (c), (d), and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.
2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.
3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.
4. Report data on a year-to-date basis.

Line No.	Item (a)	Unrealized Gains and Losses on Available-for-Sale Securities (b)	Minimum Pension Liability Adjustment (net amount) (c)	Foreign Currency Hedges (d)	Other Adjustments (e)
1	Balance of Account 219 at Beginning of Preceding Year				
2	Preceding Qtr/Yr to Date Reclassifications from Acct 219 to Net Income				
3	Preceding Qtr/Yr to Date Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 219 at End of Preceding Qtr/Yr				
6	Balance of Account 219 at Beginning of Current Year				
7	Current Qrt/Yr to Date Reclassifications from Act 219 to Net Income				
8	Current Qrt/Yr to Date Changes in Fair Value				
9	Total (lines 7 and 8)				
10	Balance of Account 219 at End of Current Qrt/Yr				

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SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS FOR DEPRECIATION, AMORTIZATION AND DEPLETION

Report in column (c) the amount for electric function, in column (d) the amount for gas function, in column (e), (f), and (g) report other (specify) and in column (h) common function.

Line No.	Classification (a)	Total Company for the Current Year/Quarter Ended (b)	Electric (c)
1	Utility Plant		
2	In Service		
3	Plant in Service (Classified)		
4	Property Under Capital Leases		
5	Plant Purchased or Sold		
6	Completed Construction not Classified		
7	Experimental Plant Unclassified		
8	Total (3 thru 7		
9	Leased to Others		
10	Held for Future Use		
11	Construction Work in Progress		
12	Acquisition Adjustments		
13	Total Utility Plant (8 thru 12)		
14	Accum Prov for Depr, Amort, and Depl		
15	Net Utility Plant (13 less 14)		
16	Detail of Accum Prov for Depr, Amort and Depl		
17	In Service:		
18	Depreciation		
19	Amort and Depl of Producing Nat Gas Land/Land Right		
20	Amort of Underground Storage Land/Land Rights		
21	Amort of Other Utility Plant		
22	Total In Service (18 thru 21)		
23	Leased to Others		
24	Depreciation		
25	Amortization and Depletion		
26	Total Leased to Others (24 and 25)		
27	Held for Future Use		
28	Depreciation		
29	Amortization		
30	Total Held for Future Use (28 and 29)		
31	Abandonment of Leases (Natural Gas)		
32	Amort of Plant Acquisition Adj		
33	Total Accum Prov (equals 14) (22,26,30,31,32)		

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CONSTRUCTION WORK IN PROGRESS - ELECTRIC (Account 10 7)

1. Report descriptions and balances at end of year for projects in process of construction (107).
2. Show items relating to "research, development, and demonstration" projects last, under a caption Research, Development, and Demonstrating (see Account 107 of the Uniform System of Accounts).
3. Minor projects (5% of the Balance End of the Year for Account 107 or $1,000,000 whichever is less) may be grouped.

Line No.	Description of Project (a)	Construction work in progress – Electric (Account 107) (b)
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ALLOWANCES (Accounts 158.1 and 158.2)

1. Report the particulars (details) called for concerning allowances.
2. Report all acquisitions of allowances at cost.
3. Report allowances in accordance with the weighted average cost allocation method and other accounting as prescribed by General Instruction No. 21 in the Uniform System of Accounts.
4. Report the allowance transactions by the period they are first eligible for use: the current year's allowances in columns (b)-(c), allowances for the three succeeding years in columns (d)-(i), starting with the following year, and allowances for the remaining succeeding years in columns (j)-(k).
5. Report on Lines 4 and 50, the Environmental Protection Agency (EPA) issued allowances. Report withheld portions on Lines 36-40 and Lines 82-86.

Line No.	SO2 Allowances Inventory (Account 158.1) (a)	Current Year		2010	
		No. (b)	Amount (c)	No. (d)	Amount (e)
1	Balance-Beginning of Year				
2					
3	Acquired During Year:				
4	Issued (Less Withheld Allow)				
5	Returned by EPA				
6					
7					
8	Purchases/Transfers:				
9	Other Purchases-See notes				
10					
11					
12					
13					
14					
15	Total				
16					
17	Relinquished During Year:				
18	Charges to Account 509				
19	Other:				
20					
21	Cost of Sales/Transfers:				
22	Other Sales-See notes				
23					
24					
25					
26					
27					
28	Total				
29	Balance-End of Year				
30					
31	Sales:				
32	Net Sales Proceeds (Assoc. Co.)				
33	Net Sales Proceeds (Other)				
34	Gains				
35	Losses				
	Allowances Withheld (Acct 158.2)				
36	Balance-Beginning of Year				
37	Add: Withheld by EPA				
38	Deduct: Returned by EPA				
39	Cost of Sales				
40	Balance-End of Year				
41					
42	Sales:				
43	Net Sales Proceeds (Assoc. Co.)				
44	Net Sales Proceeds (Other)				
45	Gains				
46	Losses				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of Year/Qtr

ALLOWANCES (Accounts 158.1 and 158.2) (Continued)

Line No.	NOx Allowances Inventory (Account 158.1) (a)	Current Year		2010	
		No. (b)	Amount (c)	No. (d)	Amount (e)
47	Balance-Beginning of Year				
48					
49	Acquired During Year:				
50	Issued (Less Withheld Allow)				
51	Returned by EPA				
52					
53					
54	Purchases/Transfers:				
55	Other Purchases-See notes				
56					
57					
58					
59					
60					
61	Total				
62					
63	Relinquished During Year:				
64	Charges to Account 509				
65	Other:				
66					
67	Cost of Sales/Transfers:				
68	Other Sales-See notes				
69					
70					
71					
72					
73					
74	Total				
75	Balance-End of Year				
76					
77	Sales:				
78	Net Sales Proceeds (Assoc. Co.)				
79	Net Sales Proceeds (Other)				
80	Gains				
81	Losses				
	Allowances Withheld (Acct 158.2)				
82	Balance-Beginning of Year				
83	Add: Withheld by EPA				
84	Deduct: Returned by EPA				
85	Cost of Sales				
86	Balance-End of Year				
87					
88	Sales:				
89	Net Sales Proceeds (Assoc. Co.)				
90	Net Sales Proceeds (Other)				
91	Gains				
92	Losses				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of Year/Qtr

ALLOWANCES (Accounts 158.1 and 158.2)

6. Report on Lines 5 and 51 allowances returned by the EPA. Report on Lines 39 and 76 the EPA sales of the withheld allowances. Report on Lines 43-46 and 89-92 the net proceeds and gains/losses resulting from the EPA sale or auction of the withheld allowances.
7. Report on Lines 8-14 and 54-60 the names of vendors/transferors of allowances acquired and identify associated companies (See "associated company" under "Definitions" in the Uniform System of Accounts).
8. Report on Lines 22-27 and 68-73 the names of purchasers/transferees of allowances disposed of and identify associated companies.
9. Report the net costs and benefits of hedging transactions on a separate line under purchases/transfers and sales transfers.
10. Report on Lines 32-35, 78-81, 43-46 and 89-92 the net sales proceeds and gains or losses from allowances sales.

2011		2012		Future Years		Totals		Line No.
No. (f)	Amount (g)	No. (h)	Amount (i)	No. (j)	Amount (k)	No. (l)	Amount (m)	
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ALLOWANCES (Accounts 158.1 and 158.2) (Continued)

2011		2012		Future Years		Totals		Line No.
No. (f)	Amount (g)	No. (h)	Amount (i)	No. (j)	Amount (k)	No. (l)	Amount (m)	
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of Year/Qtr

TRANSMISSION SERVICE AND GENERATION INTERCONNECTION STUDY COSTS

1. Report the particulars (details) called for concerning the costs incurred and the reimbursements received for performing transmission service and generator interconnection studies.
2. List each study separately.
3. Report in column (a) provide the name of the study.
4. Report in column (b) the cost incurred to perform the study at the end of period.
5. Report in column (c) the account charged with the cost of the study.
6. Report in column (d) the amounts received for reimbursement of the study costs at end of period.
7. Report in column (e) the account credited with the reimbursement received for performing the study.
8. Report data on a year-to-date basis.

Line No.	Description (a)	Costs Incurred During Period (b)	Account Charged (c)	Reimbursements Received During the Period (d)	Account Credited With Reimbursement (e)
	Transmission Studies				
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
	Generation Studies				
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

OTHER REGULATORY ASSETS (Account 182.3)

1. Report the particulars (details) called for concerning other regulatory liabilities, including rate order docket number, if applicable.
2. Minor items (5% of the Balance at the End of the Year for Account 182.3 or amounts less than $100,000 whichever is less) may be grouped by classes.
3. For Regulatory Liabilities being amortized, show period of amortization.

Line No.	Description and Purpose of Other Regulatory Assets (a)	Balance at Beginning Current Quarter/Year (b)	Debits (c)	CREDITS		Balance at End of Current Quarter/Year (f)
				Written off During Quarter/Year Account Charged (d)	Written off During the Period (e)	
1						
2						
3						
4						
5						
6						
7						
8						
9						
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11						
12						
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14						
15						
16						
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32						
33						
34						
35						
36						
37						
38						
Total						

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

MISCELLANEOUS DEFERRED DEBITS (Account 186)

1. Report the particulars (details) called for concerning miscellaneous deferred debits.
2. For any deferred debit being amortized, show period of amortization in column (a).
3. Minor item (1% of the Balance at End of Year for Account 186 or amounts less than $100,000, whichever is less) may be grouped by classes.

Line No.	Title of Account (a)	(Ref.) Page No. (b)	Total Current Year to Date Balance for Quarter/Year (c)	Total Prior Year to Date Balance for Quarter/Year (d)	Current 3 months Ended Quarterly Only No 4th Quarter (e)	Prior 3 Months Ended Quarterly Only No 4th Quarter (f)
1						
2						
3						
4						
5						
6						
7						
8						
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49						

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

OTHER DEERRED CREDITS (Account 253)

1. Report the particulars (details) called for concerning other deferred credits.
2. For any deferred credit being amortized, show the period of amortization.
3. Minor items (5% of the Balance at the End of the Year for Account 253 or amounts less than $100,000, whichever is less) may be grouped by classes.

Line No.	Description and Other Deferred Credits (a)	Balance at Beginning Year (b)	CREDITS		Credits (e)	Balance at End of Year (f)
			Contra Account (c)	Amount (d)		
1						
2						
3						
4						
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Other Regulatory Liabilities (Account 254)

1. Report the particulars (details) called for concerning other regulatory liabilities, including rate order docket number, if applicable.
2. Minor items (5% of the Balance at the End of the Year for Account 254 or amounts less than $100,000, whichever is less) may be grouped by classes.
3. For Regulatory Liabilities being amortized, show period of amortization.

Line No.	Description and Purpose of Other Regulatory Assets (a)	Balance at Beginning Current Quarter/Year (b)	DEBITS		Credits (e)	Balance at End of Current Quarter/Year (f)
			Account Credited (c)	Amount (d)		
1						
2						
3						
4						
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11						
12						
13						
14						
15						
16						
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31						
32						
33						
34						
35						
36						
37						
38						
Total						

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

ELECTRIC OPERATING REVENUES (Account 400)

1. The following instructions generally apply to the annual version of these pages. Do not report quarterly data in columns (c), (e), (f), and (g). Unbilled revenues and MWH related to unbilled revenues need not be reported separately as required in the annual version of these pages.
2. Report operating revenues for each prescribed account, and manufactured gas revenues in total.
3. Report number of customers, columns (f) and (g), on the basis of meters, in addition to the number of flat rate accounts; except that where separate meter readings are added for billing purposes, one customer should be counted for each group of meters added. The average number of customers means the average of twelve figures at the close of each month.
4. If increases or decreases from previous period (columns (c), (e), and (g)), are not derived from previously reported figures, explain any inconsistencies in a footnote.
5. Disclose amounts of $250,000 or greater in a footnote for accounts 451, 456, and 457.2.

Line No.	Title of Account (a)	Operating Revenues Year to Date Quarterly/Annual (b)	Operating Revenues Previous year (no Quarterly) (c)
1	Sales of Electricity		
2	(440) Residential Sales		
3	(442) Commercial and Industrial Sales		
4	Small (or Comm.) (See Instruction 4)		
5	Large (or Ind.) (See Instruction 4)		
6	(444) Public Street and Highway Lighting		
7	(445) Other Sales to Public Authorities		
8	(446) Sales to Railroads and Railways		
9	(448) Interdepartmental Sales		
10	TOTAL Sales to Ultimate Consumers		
11	(447) Sales for Resale		
12	TOTAL Sales of Electricity		
13	(Less) (449.1) Provision for Rate Returns		
14	TOTAL Revenues Net of Prov. for Refunds		
15	Other Operating Revenues		
16	(450) Forfeited Discounts		
17	(451) Miscellaneous Service Revenues		
18	(453) Sales of Water and Water Power		
19	(454) Rent from Electric Property		
20	(455) Interdepartmental Rents		
21	(456) Other Electric Revenues		
22	(456.1) Revenues from Transmission of Electricity of Others		
23	(457.1) Regional Control Service Revenues		
24	(457.2) Miscellaneous Revenues		
25			
26	TOTAL Other Operating Revenues		
27	TOTAL Electric Operating Revenues		

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

TRANSMISSION OF ELECTRICITY FOR OTHERS (Account 456.1) (continued)
(Including transactions referred to as "wheeling")

5. In column (e), identify the FERC Rate Schedule of Tariff Number, On separate lines, list all FERC rate schedules or contract designations under which service, as identified in column (d), is provided.
6. Report receipt and delivery locations for all single contract path, "point to point" transmission service. In column (f), report the designation for the substation, or other appropriate identification for where energy was received as specified in the contract. In column (g) report the designation for the substation, or other appropriate identification for where energy was delivered as specified in the contract.
7. Report in column (h) the number of megawatts of billing demand that is specified in the firm transmission service contract. Demand reported in column (h) must be in megawatts. Footnote any demand not stated on a megawatts basis and explain.
8. Report in column (i) and (j) the total megawatt hours received and delivered.

FERC Rate Schedule of Tariff Number (e)	Point of Receipt (Substation or Other Designation) (f)	Point of Delivery (Substation or Other Designation) (g)	Billing Demand (MW) (h)	TRANSFER OF ENERGY		Line No.
				Megawatt Hours Received (i)	Megawatt Hours Delivered (j)	
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
						12
						13
						14
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						32
						33

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

TRANSMISSION OF ELECTRICITY FOR OTHERS (Account 456.1) (continued)
(Including transactions referred to as "wheeling")

9. Report in column (k) through (n), the revenue amounts as shown on bills or vouchers. In column (k), provide revenues from demand charges related to the billing demand reported in column (h). In column (l), provide revenues from energy charges related to the amount of energy transferred. In column (m), provide the total revenues from all other charges on bills or vouchers rendered, including out of period adjustments. Explain in a footnote all components of the amount shown in column (m). Report in column (n) the total charge shown on bills rendered to the entity listed in column (a). If no monetary settlement was made, enter zero (11011) in column (n). Provide a footnote explaining the nature of the non-monetary settlement, including the amount and type of energy or service rendered.
10. The total amounts in columns (i) and (j) must be reported as Transmission Received and Transmission Delivered for annual report purposes only on Page 401, Lines 16 and 17, respectively.
11. Footnote entries and provide explanations following all required data.

REVENUE FROM TRANSMISSION OF ELECTRICITY FOR OTHERS				
Demand Charges ($) (k)	Energy Charges ($) (l)	(Other Charges) ($) (m)	Total Revenues ($) (k+l+m) (n)	Line No.
				1
				2
				3
				4
				5
				6
				7
				8
				9
				10
				11
				12
				13
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				33

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

TRANSMISSION OF ELECTRICITY BY OTHERS (Account 565)
(Including transactions referred to as "wheeling")

1. Report all transmission, i.e. wheeling or electricity provided by other electric utilities, cooperatives, municipalities, other public authorities, qualifying facilities, and others for the quarter.
2. Report in column (a) each company or public authority that provided transmission service. Provide the full name of the company, abbreviate if necessary, but do not truncate name or use acronyms. Explain in a footnote any ownership interest in or affiliation with the transmission service provider. Use additional columns as necessary to report all companies or public authorities that provided transmission service for the quarter reported.
3. In column (b) enter a Statistical Classification code based on the original contractual terms and conditions of the service as follows: FNS – Firm Network Transmission Service for Self, LFP – Long-Term Firm Point-to-Point Transmission Reservations. OLF – Other Service, and OS – Other Transmission Service. See General Instructions for definitions of statistical classifications.
4. Report in column (c) and (d) the total megawatt hours received and delivered by the provider of the transmission service.
5. Report in column (e), (f), and (g) expenses as shown in bills or vouchers rendered to the respondent. In column (e) report the demand charges and in column (f) energy charges related to the amount of energy transferred. In column (g) report the total of all components of the amount shown in column (g). Report in column (h) the total charge shown on bills rendered to the respondent. If no monetary settlement was made, enter zero in column (h). Provide a footnote explaining the nature of the non-monetary settlement.
6. Enter "TOTAL" in column (a) as the last line.
7. Footnote entries and provide explanations following all required data.

Line No.	Name of Company or Public Authority (Footnote Affiliations) (a)	Statistical Classification (b)	TRANSFER OF ENERGY		EXPENSES FOR TRANSMISSION OF ELECTRICITY BY OTHERS			
			Megawatt-hours Received (c)	Megawatt-hours Delivered (d)	Demand Charges ($) (e)	Energy Charges ($) (f)	Other Charges ($) (g)	Total Cost of Transmission ($) (h)
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
	TOTAL							

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES

1. Describe and show below costs incurred and accounts charged during the year for technological research, development, and demonstration (R, D, and D) project initiated, continued or concluded during the year. Report also support given to others during the year for jointly-sponsored projects. (Identify recipient regardless of affiliation.). For any R, D and D work carried with others, show separately the respondent's cost for the year and cost chargeable to others (See definition of research, development, and demonstration in the Uniform System of Accounts).
2. Indicate in column (a) the applicable classification, as shown below:

Classifications:

A. Electric R, D and D Performed Internally:
- (1) Generation
  - a. Hydroelectric
    - i.. Recreation fish and wildlife
    - ii. Other hydroelectric
  - b. Fossil-fuel steam
  - c. Internal combustion or gas turbine
  - d. Nuclear
  - e. Unconventional generation
  - f. Siting and heat rejection
- (2) Transmission
  - a. Overhead
  - b. Underground
- (3) Distribution
- (4) Regional Transmission and Market Operation
- (5) Environment (other than equipment)
- (6) Other (Classify and include items in excess of $50,000.)
- (7) Total Cost Incurred

B. Electric R, DandD Performed Externally:
- (1) Research Support to the Electrical Research Council or the Electric Power Research Institute

Line No.	Classification (a)	Description (b)
1		
2		
3		
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES (Continued)

(2) Research Support to Edison Electric Institute
(3) Research Support to Nuclear Power Groups
(4) Research Support to Others (Classify)
(5) Total Cost Incurred

3. Include in column (c) all R, D and D items performed internally and in column (d) those items performed outside the company costing $50,000 or more, briefly describing the specific area of R, D and D (such as safety, corrosion control, pollution, automation, measurement, insulation, type of appliance, etc.). Group items under $50,000 by classifications and indicate the number of items grouped. Under Other, (A (6) and B (4)) classify items by type of R, D and D activity.
4. Show in column (e) the account number charged with expensed during the year or the account to which amounts were capitalized during the year, listing Account 107, Construction Work in Progress, first. Show in column (f) the amounts related to the account charged in column (e).
5. Show in column (g) the total unamortized accumulating of costs of projects. This total must equal the balance in Account 188, Research, Development, and Demonstration Expenditures, Outstanding at the end of the year.
6. If costs have not been segregated for R, D&D activities or projects, submit estimates for columns (c), (d), and (f) with such amounts identified by "Est."
7. Report separately research and related testing facilities operated by the respondent.

Costs Incurred Internally Current Year (c)	Costs Incurred Externally Current Year (d)	AMOUNTS CHARGED IN CURRENT YEAR		Unamortized Accumulation (g)	Line No.
		Account (e)	Amount (f)		
					1
					2
					3
					4
					5
					6
					7
					8
					9
					10
					11
					12
					13
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

MONTHLY PEAKS AND OUTPUT

1. Report the monthly peak load and energy output. If the respondent has two or more power which are not physically integrated, furnish the required information for each non-integrated system.
2. Report in column (b) by month the system's output in Megawatt hours for each month.
3. Report in column (c) by month the non-requirements sales for resale. Include in the monthly amounts any energy losses associated with the sales.
4. Report in column (d) by month the system's monthly maximum megawatt load (60 minute integration) associated with the system.
5. Report in column (e) and (f) the specified information for each monthly peak load reported in column (d).

NAME OF SYSTEM:

Line No.	Month (a)	Total Monthly Energy (b)	Monthly Non-Requirements Sales for Resale and Associated Losses (c)	Monthly Peak		
				Megawatts (See inst. 4) (d)	Day of Month (e)	Hour (f)
29	January					
30	February					
31	March					
32	April					
33	May					
34	June					
35	July					
36	August					
37	September					
38	October					
39	November					
40	December					
41	TOTAL					

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

TRANSACTIONS WITH ASSOCIATED (AFFILIATED) COMPANIES

1. Report below the information called for concerning all non-power goods or services received from or provided to associated (affiliated) companies.
2. The reporting threshold for reporting purposes is $250,000. The threshold applies to the annual amount billed to the respondent or billed to an associated/affiliated company for non-power goods and services. The good or service must be specific in nature. Respondents should not attempt to include or aggregate amounts in a nonspecific category such as "general".
3. Where amounts billed to or received from the associated (affiliated) company are based on an allocation process, explain in a footnote.

Line No.	Description of the Non-Power Good or Service (a)	Name of Associated/Affiliated Company (b)	Account Charged or Credited (c)	Amount Charged or Credited (d)
1	Non-power Goods or Services Provided by Affiliated Company			
2				
3				
4				
5				
6				
7				
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10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20	Non-power Goods or Services Provided for Affiliated Company			
21				
22				
23				
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Appendix B - List of Proposed Technical Changes and Responses.

	Name	Comment	Commission Response
1	EEI and NYISO	The software's cross-checking function has not been functional for some time, requiring companies to perform an additional level of review and verification.	The data cross-checking function is being updated for the 2008 reporting year.
2	Duke	Column width cannot be altered to make dollar input fit and be readable. This occurred on Form 1, pages 120-121, Statement of Cash Flows, line 44, column (b).	This problem could not be replicated and may be a function of the user's printer setup. Twelve readable digits can be added.
3	EEI	Page 114, Instruction # 1 – Should it read report in column (e) the balance for the reporting quarter and in column (f) the balance for the same three-month period for the prior year, rather than column (d) and column (e)? The instruction appears to be a column off.	The instructions are being revised.
4	EEI	Page 114, Instruction # 2 – Should it read report in column (g) the quarter-to-date amounts for electric utility function; in column (i) the quarter-to-date amounts for gas utility, and in column (k) the quarter-to-date amounts for other utility function for the current year's quarter, rather than columns (f), (h), and(j). The instruction appears to be a column off.	The instructions are being revised.
5	EEI	Page 114, Instruction # 3 – Should it read report in column (h) the quarter-to-date amounts for electric utility function; in column (j) the quarter-to-date amounts for gas utility; and in column (*l*) the quarter-to-date amounts for other utility function for the prior year quarter, rather than columns (g), (i), and (k)? The instruction appears to be a column off.	The instructions are being revised.
6	EEI	Page 200 – Should column (h) be for Common rather than column (f), as referenced in instructions?	The instructions are being revised.
7	EEI	Page 205 – Instruction 9 cuts off, as well as anything after that.	The correction is being made.
8	EEI	Page 401b – The instructions refer to lines 2 through 6, but there are no such lines on this page. The instructions should refer to columns (b) through (f).	The correction is being made.
9	EEI	Page 110, Line 15 has a reference page to 122. There is no page 122; it is "Intentionally Left Blank." Why is the page referenced on the Balance Sheet?	The reference is being corrected.
10	EEI	Page 111, Line 70 should reference page 230a, not page 230.	The reference is being revised.
11	EEI	Page 111, line 72 should reference page 230b, not	The reference is being revised.

		page 230.	
12	EEI	Page 112, lines 4-6 and 8 reference page 252. There is no page 252. Why is it referenced?	The reference is being corrected.
12-a	EEI	Page 112, line 10 should reference page 254b, not page 254.	The reference is being corrected.
13	EEI	Page 117, lines 43-44 and 66-67 reference page 340. There is no page 340. Why is it referenced?	The reference is being corrected.
14	EEI	Pages 122(a) and (b) – These pages follow the notes, but should come before the notes according to the page number order.	The Comparative Balance Sheet, Statement of Income, Statement of Retained Earnings, Statement of Cash Flows, together with the Notes to the Financial Statements are part of the basic financial statements. They are all subject to the CPA Certification Statement requirements. Since the Statement of Comprehensive Income, pages 122(a) and (b), is not a basic financial statement it follows these schedules.
15	EEI	On many pages of the Form 1, the footnotes contain improper page references or appear on the wrong page. Each of the pages that contains footnotes shows page 450.1 on the bottom, regardless of the actual page number.	There are no known issues. Users experiencing problems may contact ferconlinesupport@ferc.gov Page 450.1 is being revised to say "footnote"
16	Duke	Printed hard copies from the software do not always match what is seen on screen.	The printed hard copy should match what is seen on the screen. If the user finds a difference between the two, please contact ferconlinesupport@ferc.gov
17	EEI	Page 399 – Grayed-out items (where no data should appear) get populated with subtotals or random figures that do not appear to be derived from a formula or calculation. Companies have to black them out with a marker when submitting the forms for printing. Can this be deleted or corrected?	In column (d), Lines 4, 8 and 12 appear to show subtotals where amounts are grayed-out and are being corrected.
18	EEI	Duplicate pages often print. Is it possible to make changes to prevent this?	Individual users may experience problems because their networks or operating systems may interfere with receiving a software update. Users experiencing this problem should contact ferconlinesupport@ferc.gov
19	Duke	There have been instances when footnotes have been added to pages and disappear upon later return	While individual users might experience this problem, it is not

		to the page.	software related. Users experiencing problems may contact ferconlinesupport@ferc.gov
20	Duke	At times, filers have not been able to save changes to the forms when using the save function.	While individual users might experience this problem, it is not software related. Users experiencing problems should contact ferconlinesupport@ferc.gov
21	EEI	When companies enter information into FOSS, they find in some cases that the information is inaccurately totaled, incorrectly displayed on the screen, or wrongly printed.	The problem could not be replicated. Users experiencing problems should contact ferconlinesupport@ferc.gov
22	EEI	EEI members have experienced a number of problems with the current FERC financial form software, Version 5.19.0 of FOSS.	The current version of the Form 1 Submission Software is Version 5.22.0. User experiencing problems should contact ferconlinesupport@ferc.gov
23	NYISO	The "data cross-check" feature used in the Commission's reporting software has not always functioned correctly.	The data cross-checking function is being updated for the 2008 reporting year.
24	EEI	Page 332 – In the Transfer of Energy section column headings, the word megawatt is misspelled as "magawatt."	The correction is being made.
25	Wisc. Electric Power Co.	Wisconsin Electric suggests that the instructions to all pages should be updated to include regional transmission organization ("RTO") accounting and reporting requirements. Specifically, pages 310-311, 326-327, 332, 397-398 should receive this update. The instructions on these pages should also be enhanced to provide proper RTO MWh netting and reporting to meet FERC requirements.	We are reviewing the instructions to these pages in order to update them as appropriate in a future update to Form 1.
26	NYISO	The Financial Forms do not provide clarity as to what level of reporting information is required for the footnote disclosures included in the quarterly Form 3-Q.	Order No. 646, P 38 reads "Quarterly financial reporting is a supplement to the FERC Annual Reports, and it presumes the users of the quarterly financial reports have read the audited financial statements from the preceding year, including the notes to the annual financial statements. Therefore, footnote disclosure which would substantially duplicate the disclosures contained in the most recent FERC Annual Report may be omitted. However, disclosure must be provided where events

			subsequent to the end of the most recent year have occurred which have a material effect on the respondent".
27	Duke	Should have the ability to copy data into the software directly from Microsoft Excel, Word, or from other sources such as SEC 10K files.	See discussion in body of this Order.
28	Duke	The FERC software is extremely time consuming and requires hours of formatting work.	The Commission is only aware of formatting requirements on pages 122-123.
29	Duke	Make it easier to copy and paste blocks of data or text into software.	See discussion in body of this Order.
30	Duke	Upgrade help tool so help topics can be entered and help screens assist preparers.	Requires significant software update - beyond the scope of this proceeding.
31	Duke	Printing capabilities in the software need to be improved. The ability to print individual pages within a section should be available to the user.	Requires significant software update - beyond the scope of this proceeding.
32	Duke	Form 1, pages 310 and 326 (Sales for Resale and Purchase Power): FERC should publish guidelines on how to count volumes, particularly volumes associated with financial transactions.	We are reviewing the instructions to these pages in order to update them as appropriate in a future update to Form 1.
33	Duke	Need improved clarification on all field definitions within the financial forms.	We are reviewing the instructions to these pages in order to update them as appropriate in a future update to Form 1.
34	Duke	Form 1, page 401A (Electric Energy Account): FERC should publish additional instructions on which hours should be reported. There is confusion on this page pertaining to what data should be included with respect to physical versus financial transactions.	This issue is beyond the scope of this proceeding.
35	Duke	Form 1, pages 301 and 326 (Electric Operating Revenues and Purchased Power): Duke would like clarification on how the statistical classification column (b) is being used.	This issue is beyond the scope of this proceeding.
36	New York Commission	The instructions for reporting electric operating revenues should be clarified to ensure consistency. In order to ensure consistency, the instructions on pages 300-301 of Form 1 should indicate that delivery-only revenues shall be recorded as Other Electric Revenues (Account 456), while sales of electricity shall be recorded on a full-service basis (Accounts 440 through 448), assuming the USofA is not revised to provide for an unbundling of electric operating revenues.	The instructions are being revised as discussed in the body of Order.

Appendix C: List of Commenters

	Company Name	Abbreviation
1.	American Electric Power	AEP
2.	American Public Power Association	APPA
3.	Bonneville Power Administration	BPA
4.	Cogentrix Energy, LLC*	Cogentrix
5.	Duke Energy Corporation	Duke
6.	Edison Electric Institute	EEI
7.	FirstEnergy Service Company	FirstEnergy
8.	International Transmission Company (ITC), Michigan Electric Transmission Co., LLC (METC), and ITC Midwest LLC**	International Transmission
9.	Michigan Public Service Commission	Michigan Commission
10.	MidAmerican Energy Co., and PacifiCorp	MidAmerican
11.	Nevada Power Company and Sierra Pacific Power Company	Nevada Companies
12.	New York State Public Service Commission	New York Commission
13.	Oklahoma Corporation Commission	Oklahoma Commission
14.	San Diego Gas & Electric Company	SDG&E
15.	Transmission Access Policy Study Group	TAPS

* Filed comments out of time.

** ITC and METC filed reply comments.

[FR Doc. E8–23458 Filed 10–6–08; 8:45 am]
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Federal Register

Tuesday,
October 7, 2008

Part III

Department of Energy

10 CFR Part 431

Energy Conservation Program for Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number: EERE–2007–BT–STD–0012]

RIN 1904–AB44

Energy Conservation Program for Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) has determined that its adoption of amended energy conservation standards for commercial standard size packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), at efficiency levels more stringent than those in American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1–1999, is supported by clear and convincing evidence that such standards would result in significant additional conservation of energy and are technologically feasible and economically justified. On this basis, DOE is today amending the existing energy conservation standards for these types of equipment. In addition, DOE has determined that its adoption of amended energy conservation standards more stringent than the efficiency levels specified by ASHRAE Standard 90.1–1999 for non-standard size PTACs and PTHPs is not supported by clear and convincing evidence, thus, DOE is adopting the efficiency levels in ASHRAE Standard 90.1–1999 for non-standard size PTACs and PTHPs in today's final rule.

DATES: The effective date of this rule is November 6, 2008. The standards established in today's final rule will be applicable starting October 8, 2012 for standard size PTACs and PTHPs. The standards established in today's final rule will be applicable starting October 7, 2010 for non-standard size PTACs and PTHPs.

ADDRESSES: For access to the docket to read background documents, the technical support document, transcripts of the public meetings in this proceeding, or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For more information about visiting the Resource Room, please call Ms. Brenda Edwards at (202) 586–2945. (**Note:** DOE's Freedom of Information Reading Room no longer houses rulemaking materials.) You may also obtain copies of the final rule notice in this proceeding, related documents (*e.g.*, the notice of proposed rulemaking and technical support document DOE used to reassess whether to adopt certain efficiency levels in ASHRAE Standard 90.1), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/commercial/packaged_ac_hp.html.*

FOR FURTHER INFORMATION CONTACT: Wes Anderson, Project Manager, Energy Conservation Standards for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–7335. *E-mail: Wes.Anderson@ee.doe.gov.*

Francine Pinto, Esq., or Michael Kido, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. *Phone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule and Its Benefits

A. The Standard Levels

The Energy Policy and Conservation Act, as amended (EPCA), (42 U.S.C. 6291, *et seq.*), establishes mandatory energy conservation standards for certain commercial equipment covered by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America (IESNA) Standard 90.1, including packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs) (collectively referred to as ''packaged terminal equipment''). EPCA states that the Department of Energy (DOE) may prescribe amended standards for this equipment that exceed the stringency of efficiency levels contained in amendments to ASHRAE Standard 90.1, only if DOE determines by rule that any such standard ''would result in significant additional conservation of energy and is technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(ii)(II)) This determination must be ''supported by clear and convincing evidence.'' *Id.* If DOE is unable to find that clear and convincing evidence exists that a more stringent efficiency level than the efficiency level contained in ASHRAE Standard 90.1 would result in a significant additional energy savings and is technologically feasible and economically justified, then EPCA states DOE must establish an amended uniform national standard for the product at the minimum level specified in the amended ASHRAE/IES Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) The standards in today's final rule, which apply to all packaged terminal equipment, satisfy these requirements and will achieve the maximum improvements in energy efficiency that are technologically feasible and economically justified. (*See* 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A).)

Table I.1 shows the amended energy conservation standards that DOE is adopting today. These amended energy conservation standards will apply to standard size PTACs and PTHPs manufactured for sale in the United States, or imported to the United States, on or after October 8, 2012 and non-standard size PTACs and PTHPs manufactured for sale in the United States, or imported to the United States, on or after October 7, 2010.

TABLE I.1—AMENDED ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS

Equipment class			Energy conservation standards *
Equipment	Category	Cooling capacity (British thermal units per hour [Btu/h])	
PTAC	Standard Size **	<7,000	EER = 11.7
		7,000–15,000	EER = 13.8 − (0.300 × Cap ††)
		>15,000	EER = 9.3
	Non-Standard Size †	<7,000	EER = 9.4
		7,000–15,000	EER = 10.9 − (0.213 × Cap ††)
		>15,000	EER = 7.7
PTHP	Standard Size **	<7,000	EER = 11.9 COP = 3.3
		7,000–15,000	EER = 14.0 − (0.300 × Cap ††) COP = 3.7 − (0.052 × Cap ††)
		>15,000	EER = 9.5 COP = 2.9
	Non-Standard Size †	<7,000	EER = 9.3 COP = 2.7
		7,000–15,000	EER = 10.8 − (0.213 × Cap ††) COP = 2.9 − (0.026 × Cap ††)
		>15,000	EER = 7.6 COP = 2.5

* For equipment rated according to the DOE test procedure (Air-Conditioning and Refrigeration Institute [ARI] Standard 310/380–2004), all energy efficiency ratio (EER) values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled equipment and evaporatively cooled equipment and at 85 °F entering water temperature for water-cooled equipment. All coefficient of performance (COP) values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled equipment.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions having an external wall opening greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches.

† Non-standard size refers to PTAC or PTHP equipment with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches.

†† Cap means cooling capacity in thousand Btu/h (kBtu/h) at 95 °F outdoor dry-bulb temperature.

DOE only presents the benefits and burdens of adopting a standard level higher than the efficiency levels specified in ASHRAE Standard 90.1–1999. The benefits and burdens of adopting the efficiency levels in ASHRAE Standard 90.1–1999 for non-standard size PTACs and PTHPs are not calculated in this rulemaking because

DOE considers this the baseline efficiency levels even though they represent an increase in energy efficiency when compared to the current Federal energy conservation standards.

B. Current Federal Standards for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

Table I.2 presents the minimum efficiency levels in the current Federal energy conservation standards for PTACs and PTHPs.

TABLE I.2—EXISTING FEDERAL ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS

Equipment class		Existing Federal energy conservation standards*
Equipment	Cooling capacity (Btu/h)	
PTAC	<7,000	EER = 8.88
	7,000–15,000	EER = 10.0 − (0.16 × Cap**)
	>15,000	EER = 7.6
PTHP	<7,000	EER = 8.88 COP = 2.7
	7,000–15,000	EER = 10.0 − (0.16 × Cap**) COP = 1.3 + (0.16 × EER)
	>15,000	EER = 7.6 COP = 2.5

* For equipment rated according to the ARI standards, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively cooled products and at 85 °F entering water temperature for water-cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps.
** Cap means cooling capacity in kBtu/h at 95 °F outdoor dry-bulb temperature.

C. Benefits to Customers of Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

Table I.3 presents the impacts on commercial customers of the energy conservation standards adopted in today's final rule.

TABLE I.3—IMPACTS OF NEW STANDARDS FOR A SAMPLE OF COMMERCIAL CUSTOMERS *

Equipment class	Amended energy conservation standard	Total installed cost	Total installed cost increase	Life-cycle cost savings	Payback period (years)
Standard Size PTAC, 9,000 Btu/h Cooling Capacity	11.1 EER	1,229	$22	($3)	13.7
Standard Size PTAC, 12,000 Btu/h Cooling Capacity	10.2 EER	1,469	16	(2)	13.1
Standard Size PTHP, 9,000 Btu/h Cooling Capacity	11.3 EER 3.2 COP	1,362	40	28	4.4
Standard Size PTHP, 12,000 Btu/h Cooling Capacity	10.4 EER 3.0 COP	1,603	38	24	4.6
Non-Standard Size PTAC, 11,000 Btu/h Cooling Capacity.	8.6 EER	1,570	** N/A	** N/A	** N/A
Non-Standard Size PTHP, 11,000 Btu/h Cooling Capacity.	8.5 EER 2.6 COP	1,692	** N/A	** N/A	** N/A

* The values in Table I.3 represent average values and all monetary values are expressed in 2007$.
** DOE did not calculate the implications on commercial customers of non-standard equipment because DOE is adopting the efficiency levels in ASHRAE Standard 90.1–1999 (i.e., the baseline efficiency levels).

The economic impacts on commercial consumers (i.e., the average life-cycle cost (LCC) savings) are positive. For example, the typical, standard size PTAC with a cooling capacity of 9,000 Btu/h that meets the existing Federal energy conservation standards has an installed price of $1,207 and an annual energy cost of $109 (cooling only). A typical, standard size PTHP of the same cooling capacity that meets the existing Federal energy conservation standards has an installed price of $1,362 and an annual energy cost of $209. To meet the new standard, DOE estimates that the installed price of a typical, standard size PTAC with a cooling capacity of 9,000 Btu/h will be $1,229, an increase of $22. This price increase will be offset by an annual energy savings of about $3. Similarly, for a typical, standard size PTHP of the same cooling capacity to meet the new standard, the increase in installed price would be $40, offset by an annual energy savings of $11. Whereas the typical, non-standard size PTAC that meets the ASHRAE Standard 90.1–1999 efficiency levels has an installed price of $1,570 and an annual energy cost of $180.

D. Impact on Manufacturers

Using a real corporate discount rate of five-percent, DOE estimates the net present value (NPV) of the standard size packaged terminal equipment industry to be $427 million in 2007$ and the NPV of the non-standard size packaged terminal equipment industry to be $30 million in 2007$. DOE expects the impact of today's standards on the industry net present value (INPV) of manufacturers of standard size packaged terminal equipment to be between a two-percent loss and a 14 percent loss (−$8 million to −$61 million). Based

on DOE's interviews with the manufacturers of PTACs and PTHPs, DOE expects minimal plant closings or loss of employment as a result of the standards for both the standard size and non-standard size industries.

E. National Benefits

DOE estimates the amended energy conservation standards will save approximately 0.032 quads (quadrillion (10^{15}) Btu) of energy over 30 years (2012–2042). This is equivalent to all the electricity used annually by approximately 500 motels.[1]

By 2042, DOE expects the energy savings from the standards to eliminate the need for approximately one new 82-megawatt (MW) power plant. These energy savings will result in cumulative greenhouse gas emission reductions of approximately 1.06 million tons (Mt) of carbon dioxide (CO_2), or an amount equal to that produced by approximately 6,700 cars every year. Additionally, the standards will help alleviate air pollution by resulting in between approximately 90 and 2,130 tons (0.09 and 2.13 kilotons (kt)) of nitrogen oxides (NO_X) cumulative emission reductions from 2012 through 2042. Finally, the standards will also alleviate air pollution by resulting in between approximately 0 and 0.037 tons of mercury (Hg) cumulative emission reductions from 2012 through 2042.

The national NPV of the standard for standard size PTACs and PTHPs is $10 million using a seven-percent discount rate and $54 million using a three-percent discount rate, cumulative from 2012 to 2062 in 2007$. This is the estimated total value of future savings minus the estimated increased equipment costs, discounted to 2008.

The benefits and costs of today's final rule can also be expressed in terms of annualized 2007$ values over the forecast period 2012 through 2042. Using a seven-percent discount rate for the annualized cost analysis, the cost of the amended energy conservation standards established in today's final rule for standard size PTACs and PTHPs is $4.7 million per year in increased equipment and installation costs while the annualized benefits are $5.7 million per year in reduced equipment operating costs. Using a three-percent discount rate, the cost of the amended energy conservation standards established in today's final rule for standard size PTACs and PTHPs is $4.1 million per year, whereas the benefits of today's amended energy conservation standards are $6.5 million per year.

F. Other Considerations

DOE noted in the April 2008 Notice of Proposed Rulemaking (NOPR) that PTAC and PTHP equipment manufacturers also face a mandated refrigerant phaseout on January 1, 2010. 73 FR 18858, 18860 (April 7, 2008). R–22, the only refrigerant currently used by PTACs and PTHPs, is a hydrochlorofluorocarbon (HCFC) refrigerant subject to the phaseout requirement. Phaseout of this refrigerant could have a significant impact on the manufacturing, performance, and cost of PTAC and PTHP equipment. DOE discussed and estimated the impacts of the refrigerant phaseout on PTAC and PTHP equipment and on the manufacturers of this equipment in the NOPR, see generally, 73 FR 18872–74, and today's final rule.

G. Conclusion

DOE concludes that the benefits (energy savings, commercial customer LCC savings, positive national NPV, and emissions reductions) to the Nation of the amended standards for standard size equipment outweigh their costs (loss of manufacturer INPV and commercial customer LCC increases for some users of PTACs and PTHPs). DOE believes that these amended standards are technologically feasible, economically justified, and will save additional significant amounts of energy as compared to the savings that would result from adoption of the efficiency levels for standard size PTACs and PTHPs in ASHRAE Standard 90.1–1999. DOE also believes that the standards for non-standard size equipment (*i.e.*, the efficiency levels in ASHRAE Standard 90.1–1999) are technologically feasible, economically justified, and will save significant amounts of energy compared to the current Federal energy conservation standards. Finally, DOE concludes that today's standards for PTACs and PTHPs are designed to achieve the maximum improvements in energy efficiency that are technologically feasible and economically justified. Currently, PTACs and PTHPs that meet the new standard levels are commercially available utilizing R–22 refrigerant. DOE believes that PTACs and PTHPs utilizing R–410A equipment at the new standard levels will be commercially available by the effective dates of the new standard levels.

II. Introduction

A. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other than Automobiles. Part A–1 of Title III (42 U.S.C. 6311–6317) establishes a similar program for ''Certain Industrial Equipment,'' including PTACs and PTHPs, the subjects of this rulemaking.[2] DOE publishes today's final rule pursuant to Part A–1 of Title III, which provides for test procedures, labeling, and energy conservation standards for PTACs and PTHPs and certain other equipment, and authorizes DOE to require information and reports from manufacturers. The test procedure for PTACs and PTHPs appears in title 10 Code of Federal Regulations (CFR) section 431.96.

EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, effective October 24, 1992, for most types of covered equipment listed in section 342(a) of EPCA, including PTACs and PTHPs. (42 U.S.C. 6313(a)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt an amended standard at the new level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

EPCA also provides that in deciding whether a more stringent standard is economically justified for equipment such as PTACs and PTHPs, DOE must, after receiving comments on the proposed standard, determine whether the benefits of such a standard exceed its burdens by considering the following seven factors to the greatest extent practicable:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

2. The savings in operating costs throughout the estimated average life of products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to

[1] Energy Informaton Agency. 2003 CBECS public use sample, where specific building activity = ''motel or inn'' (PBAPLUS8=39). Anual electricity use averages about 177,700 kWh per yer.

[2] This part was originally titled Part C. However, it was redesignated Part A–1 after Part B of Title III of EPCA was repealed by Public Law 109–58.

result from the imposition of the standard;

3. The total projected amount of energy savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy conservation; and

7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)–(ii))

EPCA also contains an ''anti-backsliding'' provision, which prohibits DOE from prescribing any amended energy conservation standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of covered equipment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) It is a fundamental principle in EPCA's statutory scheme that DOE cannot amend standards downward; that is, *DOE may not* weaken standards that have been previously promulgated. *Natural Resources Defense Council* v. *Abraham*, 355 F.3d 179 (2d Cir. 2004).

In addition, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii)), establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard,'' as calculated under the test procedure in place for that standard. This approach provides an alternative path in establishing economic justification under the EPCA factors. (42 U.S.C. 6295(o)(2)(B)(iii)) DOE considered this test, but believes that the criterion it applies (i.e., a limited payback period) is not sufficient for determining economic justification. Instead, DOE has considered a full range of impacts, including those to the consumer, manufacturer, Nation, and environment.

Additionally, the Secretary may not prescribe an amended standard if interested persons have established by a preponderance of the evidence that the standard is ''likely to result in the unavailability in the United States of any product type (or class)'' with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(4))

Section 325(q)(1) of EPCA directs that DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of products ''which have the same function or intended use, if * * * products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard'' than applies or will apply to the other products within that type or class. (42 U.S.C. 6295(q)(1)(A) and (B)) In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must consider ''such factors as the utility to the consumer of such a feature'' and other factors DOE deems appropriate. (42 U.S.C. 6295(q)(1)) Any rule prescribing such a standard must include an explanation of the basis on which DOE established such higher or lower level. (42 U.S.C. 6295(q)(2))

Federal energy efficiency requirements for commercial equipment generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c); 42 U.S.C. 6316(a) and (b)) However, DOE can grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of the Act, as amended. (42 U.S.C. 6297(d); 42 U.S.C. 6316(b)(2)(D))

B. Background

1. Current Standards

As described in greater detail in the NOPR, 73 FR 18861–62, the current energy conservation standards in EPCA for PTACs and PTHPs apply to all equipment manufactured on or after January 1, 1994. (42 U.S.C. 6313(a)(3); 10 CFR 431.97) Table I.2 details these standards.

2. History of Standards Rulemaking for Packaged Terminal Equipment

On October 29, 1999, ASHRAE adopted ASHRAE Standard 90.1–1999, which revised the efficiency levels for various categories of commercial equipment covered by EPCA, including PTACs and PTHPs. In amending the ASHRAE Standard 90.1–1989 levels for packaged terminal equipment, ASHRAE used the equipment classes contained in EPCA, which are distinguished by equipment type (*i.e.*, air conditioner (PTAC) or heat pump (PTHP)) and cooling capacity. However, ASHRAE further divided these classes by wall sleeve dimensions, because they affect the energy efficiency of PTACs and PTHPs. Table II.1 shows the efficiency levels in ASHRAE Standard 90.1–1999 for this equipment.

TABLE II.1—ASHRAE STANDARD 90.1–1999 ENERGY EFFICIENCY LEVELS FOR PTACS AND PTHPS

Equipment class			ASHRAE standard 90.1–1999 efficiency levels *
Equipment	Category	Cooling capacity (Btu/h)	
PTAC	Standard Size **	<7,000	EER = 11.0
		7,000–15,000	EER = 12.5 − (0.213 × Cap ††)
		>15,000	EER = 9.3
	Non-Standard Size †	<7,000	EER = 9.4
		7,000–15,000	EER = 10.9 − (0.213 × Cap ††)
		>15,000	EER = 7.7
PTHP	Standard Size **	<7,000	EER = 10.8 COP = 3.0
		7,000–15,000	EER = 12.3 − (0.213 × Cap ††) COP = 3.2 − (0.026 × Cap ††)

TABLE II.1—ASHRAE STANDARD 90.1–1999 ENERGY EFFICIENCY LEVELS FOR PTACS AND PTHPS—Continued

Equipment class			ASHRAE standard 90.1–1999 efficiency levels *
Equipment	Category	Cooling capacity (Btu/h)	
		>15,000	EER = 9.1 COP = 2.8
	Non-Standard Size †	<7,000	EER = 9.3 COP = 2.7
		7,000–15,000	EER = 10.8 − (0.213 × Cap ††) COP = 2.9 − (0.026 × Cap ††)
		>15,000	EER = 7.6 COP = 2.5

* For equipment rated according to ARI standards, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively cooled products and at 85 °F entering water temperature for water-cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

† Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide. ASHRAE Standard 90.1–1999 also includes a factory labeling requirement for non-standard size PTAC and PTHP equipment as follows: ''MANUFACTURED FOR REPLACEMENT APPLICATIONS ONLY; NOT TO BE INSTALLED IN NEW CONSTRUCTION PROJECTS.''

†† Cap means cooling capacity in kBtu/h at 95 °F outdoor dry-bulb temperature.

After publication of ASHRAE Standard 90.1–1999, DOE analyzed many of its equipment categories to evaluate possible consideration of more stringent efficiency levels than those specified in the Standard. DOE summarized this analysis in a report, *Screening Analysis for EPACT-Covered Commercial HVAC [Heating, Ventilating and Air-Conditioning] and Water-Heating Equipment* (commonly referred to as the *2000 Screening Analysis*).[3] On January 12, 2001, DOE published a final rule adopting the efficiency levels in ASHRAE Standard 90.1–1999 for many types of commercial HVAC and water heating equipment, excluding packaged terminal equipment and certain other types of equipment. 66 FR 3336. Regarding PTACs and PTHPs, the preamble to the final rule stated that the *2000 Screening Analysis* indicated at least a reasonable possibility of finding ''clear and convincing evidence'' that more stringent standards ''would be technologically feasible and economically justified and would result in significant additional conservation of energy.'' 66 FR 3349–50. Under EPCA, these are the criteria for DOE's adoption of standards more stringent than the efficiency levels in ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(II)).

More recently, DOE announced the availability of a technical support document (TSD) it developed to reassess whether to adopt as national standards certain efficiency levels that were in amendments to ASHRAE Standard 90.1, including the levels in the 1999 amendments for PTACs and PTHPs. 71 FR 12634 (March 13, 2006) (Notice of Availability). According to DOE, although the revised analysis in the TSD reduced the potential energy savings that might result from standards more stringent than the efficiency levels specified in ASHRAE Standard 90.1–1999 for PTACs and PTHPs, DOE was inclined to pursue standards that are more stringent because there was a possibility that clear and convincing evidence exists that such standards are warranted. *Id.* at 12638–39. DOE stated that it would explore more stringent efficiency levels than those in ASHRAE Standard 90.1–1999 for PTACs and PTHPs through a separate rulemaking. *Id.* at 12639.

DOE proposed energy conservation standards for PTACs and PTHPs in a NOPR published on April 7, 2008. 73 FR 18858. In conjunction with the NOPR, DOE also published on its Web site the complete TSD for the proposed rule, which incorporated the final analyses that DOE conducted and technical support documentation of each analysis. The NOPR TSD included the LCC spreadsheets, the national impact analysis spreadsheets, and the manufacturer impact analysis (MIA) spreadsheet—all of which are available on DOE's PTAC and PTHP webpage. The proposed standards were as follows:

TABLE II.2—NOPR PROPOSED ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS

Equipment class			Proposed energy conservation standards *
Equipment	Category	Cooling capacity (Btu/h)	
PTAC	Standard Size **	<7,000	EER = 11.4
		7,000–15,000	EER = 13.0 − (0.233 × Cap ††)
		>15,000	EER = 9.5
	Non-Standard Size	<7,000	EER = 10.2
		7,000–15,000	EER = 11.7 − (0.213 × Cap ††)
		>15,000	EER = 8.5

[3] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy. ''Energy Conservation Program for Consumer Products: Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment Screening Analysis.'' April 2000. *http://www.eere.energy.gov/buildings/highperformance/pdfs/screening_analysis_main.pdf.*

TABLE II.2—NOPR PROPOSED ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS—Continued

Equipment class			Proposed energy conservation standards *
Equipment	Category	Cooling capacity (Btu/h)	
PTHP	Standard Size **	<7,000	EER = 11.8 COP = 3.3
		7,000–15,000	EER = 13.4 − (0.233 × Cap ††) COP = 3.7 − (0.053 × Cap ††)
		>15,000	EER = 9.9 COP = 2.9
	Non-Standard Size	<7,000	EER = 10.8 COP = 3.0
		7,000–15,000	EER = 12.3 − (0.213 × Cap ††) COP = 3.1 − (0.026 × Cap ††)
		>15,000	EER = 9.1 COP = 2.8

* For equipment rated according to the DOE test procedure (ARI Standard 310/380–2004), all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled equipment and evaporatively cooled equipment and at 85 °F entering water temperature for water-cooled equipment. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled equipment, and at 70 °F entering water temperature for water-source heat pumps.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

† Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.

†† Cap means cooling capacity in kBtu/h at 95 °F outdoor dry-bulb temperature.

The NOPR also included additional background information on the history of this rulemaking. 73 FR 18862–63. DOE held a public meeting in Washington, DC, on May 1, 2008, to accept oral comments on and solicit information relevant to the proposed rule.

III. General Discussion

A. Test Procedures

Section 343(a) of EPCA, as amended, authorizes the Secretary to amend the test procedures for PTACs and PTHPs to the latest version generally accepted by industry or the rating procedures developed or recognized by the ARI, or ASHRAE as referenced in ASHRAE Standard 90.1, unless the Secretary determines by clear and convincing evidence that the latest version of the industry test procedure does not meet specific requirements. (*See* 42 U.S.C. 6314(a)(4) As the NOPR explains, DOE has determined that its existing test procedure for PTACs and PTHPs does not need modification. 73 FR 18863. Accordingly, DOE has not adopted a revised test procedure for this equipment.

B. Technological Feasibility

1. General

To adopt standards for PTACs and PTHPs that are more stringent than the efficiency levels in ASHRAE Standard 90.1 as amended, DOE must determine, supported by clear and convincing evidence, that such standards are technologically feasible. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. DOE defines technological feasibility as follows: ''Technologies incorporated in commercially available products or in working prototypes will be considered technologically feasible.'' 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

This final rule considers the same design options as those evaluated in the NOPR. (See the final rule TSD accompanying this notice, Chapter 4.) Based on equipment literature, the teardown analysis, manufacturer interviews, and the equipment performance degradations provided by AHRI during the NOPR phase of the rulemaking, DOE considered the following design options in the final rule analysis: (1) Higher efficiency compressors; (2) increasing the heat exchanger area; and (3) recircuiting the heat exchanger coils. Since these three design options are commercially available, have been used in PTAC and PTHP equipment, and are the most common ways by which manufacturers improve the energy efficiency of their PTACs and PTHPs, DOE has determined that clear and convincing evidence supports the conclusion that all of the efficiency levels evaluated in this notice are technologically feasible. DOE further discusses the technical feasibility of PTAC and PTHP equipment utilizing R–410A in section IV.C. of today's notice.

2. Maximum Technologically Feasible Levels

In order to evaluate whether energy conservation standards for PTACs and PTHPs are economically justified, DOE determines the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible. (42 U.S.C. 6316(a); 42 U.S.C. 6295(p)(2)) DOE determined the maximum technologically feasible level (''max-tech'') efficiency levels in its engineering analysis for the NOPR. 73 FR 18863–64. (See NOPR TSD Chapter 5.) In the NOPR, DOE based its identification of the max-tech efficiency levels on standard size and non-standard size PTAC and PTHP equipment utilizing R–22 that is currently available on the market. For the final rule, DOE revised the max-tech efficiency levels for standard size and non-standard size PTACs and PTHPs based on submitted comments, which are discussed in section IV.C of today's notice. The max-tech efficiency levels considered for today's final rule are based on the efficiency levels identified in the NOPR and factor performance degradations stemming from the switch to R–410A refrigerant.[4] Table III.1 lists the max-tech efficiency levels that DOE identified for this rulemaking for the

[4] DOE expects the overall system efficiency of R–410A PTAC and PTHP equipment will be lower than if that equipment used R–22, which DOE estimated using an overall system performance degradation. This estimate is based on data submitted by manufacturers and AHRI pointing to a decline in performance when using R–410A refrigerant in place of R–22 refrigerant.

estimated system performance of equipment utilizing R–410A. DOE discusses these levels further in section IV.C.

TABLE III.1—R–410A MAX-TECH EFFICIENCY LEVELS (7,000–15,000 BTU/H EQUIPMENT CLASSES) *

Equipment type	Equipment class	Cooling capacity (Btu/h)	R–410A "Max-Tech" efficiency level **
PTAC	Standard Size †	9,000 12,000	11.5 EER 10.8 EER
	Non-Standard Size ††	11,000	10.0 EER
PTHP	Standard Size †	9,000 12,000	11.5 EER 3.3 COP 10.8 EER 3.1 COP
	Non-Standard Size ††	11,000	10.0 EER 2.9 COP

* As discussed in the NOPR, DOE is presenting the results for two cooling capacities of standard size PTACs and PTHPs, 9,000 and 12,000 Btu/h, which fall within the equipment classes of PTACs and PTHPs with cooling capacities of 7,000–15,000 Btu/h. 73 FR 18870–18871.

** For equipment rated according to the DOE test procedure, all EER values would be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively cooled products and at 85 °F entering water temperature for water-cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products and at 70 °F entering water temperature for water-source heat pumps.

† Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and having a cross-sectional area greater than or equal to 670 square inches.

†† Non-standard size refers to PTAC or PTHP equipment with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and having a cross-sectional area less than 670 square inches.

C. Energy Savings

DOE forecasted energy savings in its national energy savings (NES) analysis using an NES spreadsheet tool, which the NOPR discussed in greater detail. See generally, 73 FR 18864, 18876, 18880–83, 18899.

Among the criteria that govern DOE's adoption of more stringent standards for PTACs and PTHPs than the amended levels in ASHRAE Standard 90.1, clear and convincing evidence must support a determination that the standards would result in ''significant'' energy savings. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) Although EPCA does not define ''significant,'' the U.S. Court of Appeals for the District of Columbia indicated that Congress intended ''significant'' energy savings to mean savings that were not ''genuinely trivial'' in Section 325 of the Act. *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985). DOE's estimates of the energy savings for each of the TSLs considered for today's rule provide clear and convincing evidence that the additional energy savings each would achieve by exceeding the corresponding efficiency levels in ASHRAE Standard 90.1–1999 are nontrivial. Therefore, DOE considers these savings to be ''significant'' as required by 42 U.S.C. 6313(a)(6)(A)(ii)(II).

D. Economic Justification

As noted earlier, EPCA provides seven factors to be evaluated in determining whether an energy conservation standard for PTACs and PTHPs is economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)–(ii)) The following paragraphs discuss how DOE has addressed each of those seven factors in this rulemaking.

1. Economic Impact on Commercial Consumers and Manufacturers

DOE considered the economic impact of the standards on commercial consumers and manufacturers. For customers, DOE measures the economic impact as the change in installed cost and life-cycle operating costs, *i.e.*, the LCC. (See section V.C.1 and Chapter 8 of the TSD.) DOE investigates the impacts of amended energy conservation standards of PTACs and PTHPs on manufacturers through the manufacturer impact analysis (MIA). (See section V.C.2 and Chapter 13 of the TSD.) This factor is discussed in detail in the NOPR. See generally 73 FR 18860–61, 18864–66, 18869, 18883–87, 18893–99, 18906–07, 18910–12.

2. Life-Cycle Costs

DOE considered life-cycle costs of PTACs and PTHPs. This factor is discussed in detail in the NOPR. See generally 73 FR 18860–61, 18865, 18876–80, 18883, 18888, 18891–93. DOE calculated the sum of the purchase price and the operating expense—discounted over the lifetime of the equipment—to estimate the range in LCC benefits that commercial customers would expect to achieve due to the standards.

3. Energy Savings

Although significant additional conservation of energy is a separate statutory requirement for imposing a more stringent energy conservation standard than the level in the most current ASHRAE Standard 90.1, EPCA also requires that DOE consider the total projected energy savings that will likely result directly from the standard in determining whether a standard is economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE used the NES spreadsheet results in its consideration of total projected savings. 73 FR 18860–61, 18864, 18876, 18880–83, 18899. DOE presents the energy savings at each TSL for standard size and non-standard size PTACs and PTHPs in section V.B of today's notice.

4. Lessening of Utility or Performance of Equipment

In selecting today's standard levels, DOE sought to avoid new standards for PTACs and PTHPs that would lessen the utility or performance of that equipment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) 73 FR 18865, 18866–68, 18900. The design options considered in the engineering analysis of this rulemaking, which include higher efficiency compressors, increasing the heat exchanger area, and recircuiting the heat exchanger coils, do not involve changes in equipment design or unusual installation requirements that could reduce the utility or performance of PTACs and PTHPs. In the NOPR, DOE considered

industry concerns that one-third of the non-standard size market subject to the more stringent standards under ASHRAE Standard 90.1–1999 definition would not be able to meet the efficiency levels specified by ASHRAE Standard 90.1–1999 for standard size equipment due to the physical size constraints of the wall sleeve if this equipment class delineation was adopted. In today's final rule, DOE is adopting the equipment class delineations specified in Addendum t to ASHRAE Standard 90.1–2007. This action should mitigate manufacturers' concerns regarding the misclassification of non-standard equipment classes. DOE further discusses the equipment classes it is adopting today and the comments received from interested parties regarding equipment classes in section IV.A of today's rulemaking.

5. Impact of Any Lessening of Competition

DOE considers any lessening of competition likely to result from standards. As discussed in the NOPR (73 FR 18865, 18900), DOE requested that the Attorney General transmit to the Secretary a written determination of the impact of any lessening of competition likely to result from the proposed standards, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making such a determination, DOE provided DOJ with copies of the proposed rule and the TSD for review. (DOJ, No. 21 at p. 1–2) [5] The Attorney General's response is discussed in section IV.K.1, and is reprinted at the end of today's rulemaking.

6. Need of the Nation To Conserve Energy

In considering standards for PTACs and PTHPs, the Secretary must consider the need of the Nation to conserve energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(VI)) The Secretary recognizes that energy conservation benefits the Nation in several important ways. The non-monetary benefits of the standards will likely be reflected in improvements to the security and reliability of the Nation's energy system. Today's standards also will likely result in environmental benefits. As discussed in the proposed rule, DOE has considered these factors in adopting today's standards. See generally, 73 FR at 18860, 18865, 18888, 18900–02, 18912.

7. Other Factors

In determining whether a standard is economically justified, EPCA directs the Secretary of Energy to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(VII)) In adopting today's standard, DOE considered (1) the impacts of setting different amended standards for PTACs and PTHPs, (2) the potential that amended standards could cause equipment switching (*i.e.*, purchase of PTACs instead of PTHPs) and the effects of any such switching, (3) the uncertainties associated with the impending phaseout in 2010 of R–22 refrigerant, and (4) the impact of amended standards on the manufacture of and market for non-standard size packaged terminal equipment (*e.g.*, impacts on small businesses). See generally, 73 FR at 18860, 18865–66, 18872–74, 18882, 18884–87, 18893–98, 18902, 18911–12.

IV. Analysis Methodology and Discussion of Comments on Analysis Methodology

DOE used several analytical tools that it developed previously and adapted for use in this rulemaking. The first tool is a spreadsheet that calculates LCC and payback period (PBP). The second tool calculates national energy savings and national NPV. DOE also used the Government Regulatory Impact Model (GRIM), among other methods, in its MIA. Finally, DOE developed an approach using the National Energy Modeling System (NEMS) to estimate impacts of PTAC and PTHP energy efficiency standards on electric utilities and the environment. The NOPR discusses each analytical tool in detail. 73 FR at 18866–89.

As a basis for this final rule, DOE has continued to use the spreadsheets and approaches described above and in the NOPR. DOE used the same general methodology as applied in the NOPR, but revised some of the assumptions and inputs for the final rule in response to comments from interested parties. The following paragraphs discuss these revisions.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. DOE presented various subjects in the market and technology assessment for this rulemaking. (See the NOPR and Chapter 3 of the NOPR TSD.) These include equipment classes, manufacturers, quantities and types of equipment sold and offered for sale, retail market trends, and regulatory and nonregulatory programs. 73 FR 18866–69 and Chapter 3 of the NOPR TSD. In response to publication of the NOPR, DOE received comments from interested parties about the establishment of equipment classes for the rulemaking.

1. Equipment Classes—Generally

When evaluating and establishing energy conservation standards, DOE generally divides covered equipment into equipment classes by the type of energy used, capacity, or other performance-related features that affect efficiency. Different energy conservation standards may apply to different equipment classes. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q))

PTACs and PTHPs can be divided into various equipment classes categorized by physical characteristics that affect equipment efficiency. Key characteristics that affect the energy efficiency of the PTAC or PTHP are whether the equipment has reverse cycle heating (*i.e.*, air conditioner or heat pump), the cooling capacity, and the physical dimensions of the unit.

In the NOPR, DOE presented two alternative methods for defining PTAC and PTHP equipment classes. 73 FR 18866–18868. DOE explained the two alternative methods of defining the PTAC and PTHP equipment classes consistent with the delineations provided in ASHRAE Standard 90.1–1999 or Addendum t to ASHRAE Standard 90.1–2007 in the NOPR. *Id.* at 18867.

ASHRAE Standard 90.1–1999 refers to wall sleeve dimensions in two categories: ''New Construction'' and ''Replacement.'' Although ASHRAE Standard 90.1–1999 does not describe ''New Construction,'' Table 6.21D, footnote b of ASHRAE Standard 90.1–1999 states that ''replacement'' efficiencies apply only to units that are: (1) ''Factory labeled as follows: Manufactured for Replacement Applications Only; Not to be Installed in New Construction Projects''; and (2) manufactured ''with existing wall sleeves less than 16 inches high and less than 42 inches wide.'' Based on this

[5] ''DOJ, No. 21 at pp 1–2'' refers to (1) a statement that was submitted by the Department of Justice and is recorded in the Resource Room of the Building Technologies Program in the docket under ''Energy Conservation Program for Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards,'' Docket Number EERE–2007–BT–STD–0012, as comment number 21; and (2) a passage that appears on pages 1 and 2 of that statement.

provision, DOE understands that the ''New Construction'' category under ASHRAE Standard 90.1–1999 is residual, and covers all other PTAC and PTHPs. Hence, this category consists of equipment with wall sleeve dimensions greater than or equal to 16 inches high and greater than or equal to 42 inches wide, or lacking the requisite label.

Addendum t to ASHRAE Standard 90.1–2007 includes a new definition for non-standard size PTACs and PTHPs in place of the ''replacement'' delineation in ASHRAE Standard 90.1–1999. The new definition reads as follows: ''equipment with existing sleeves having an external wall opening of less than 16 in. high or less than 42 in. wide, and having a cross-sectional area less than 670 in^2.''

2. Comments

In the NOPR, DOE stated that ASHRAE must adopt AHRI's [6] continuous maintenance proposal before DOE can officially use this definition as the basis for DOE's standard because AHRI's proposed definitions would effectively reclassify some equipment under ASHRAE 90.1–1999's delineations as non-standard size equipment. (42 U.S.C. 6313(a)(6)(A)(ii)) When the NOPR was published, AHRI's continuous maintenance proposal on PTACs and PTHPs had been approved by ASHRAE as Addendum t to ASHRAE Standard 90.1–2007. At the time of the NOPR, that Addendum was the subject of public review by ASHRAE. DOE stated in the NOPR that if ASHRAE were to adopt the Addendum before September 2008, which is the deadline by which DOE must issue a final rule for this rulemaking, DOE proposed to incorporate the modified definition specified by that version of the ASHRAE standard in its final rule. In the NOPR, DOE sought comment from interested parties on its proposal to adopt Addendum t to ASHRAE Standard 90.1–2007. 73 FR 18867.

AHRI commented that all standard and non-standard manufacturers who are AHRI members support adoption of Addendum t. AHRI had not received comments challenging the content in Addendum t during ASHRAE's formal comment period, and ASHRAE was planning to adopt the Addendum during the ASHRAE annual meeting in June 2008. AHRI added that manufacturers believe that the definitions in Addendum t are needed to deter against the reclassification of large numbers of non-standard size PTACs and PTHPs as standard equipment, which will not be able to meet the proposed standards. (Public Meeting Transcript, No. 12 at p. 31–32, AHRI, No. 23 at pp. 6–7) [7]

ECR, McQuay, Carrier, and Ice Air also commented that DOE should use the delineations within Addendum t to classify non-standard equipment. (Public Meeting Transcript (ECR and McQuay), No. 12 at p. 31; ECR, No. 15 at p. 4; Carrier, No. 16 at p. 1; Ice Air, No. 25 at p. 5) ECR also noted that if DOE used the delineations in ASHRAE Standard 90.1–1999 to define the equipment classes for PTACs and PTHPs, approximately 50 percent of their equipment would be eliminated from the market as a result of being reclassified into the standard size category. (ECR, No. 15 at p. 4)

ECR commented that non-standard equipment is burdened by space constraints that are more stringent than the constraints for standard size PTACs and PTHPs. ECR added that the delineations within ASHRAE Standard 90.1–1999, coupled with the proposed standards (TSL 4), would force manufacturers to include more heat exchanger surface area within the limited volumes of physical chassis of the equipment, to use compressors incorporating inverter technology, and to use variable speed motors, which would result in equipment switching. (ECR, No. 15 at p. 2)

AHRI, ECR, McQuay, Ice Air, and Cold Point also commented that non-standard size PTACs and PTHPs meet a specific demand that exists in the market, particularly for older buildings. These commenters stated that if DOE adopted the delineations in ASHRAE Standard 90.1–1999, which could further eliminate non-standard size PTACs and PTHPs from the market, this would decrease competition and limit customer choices. (Public Meeting Transcript, No. 12 at pp. 20 (ECR), 22 (AHRI), 38 (McQuay); AHRI, No. 23 at p. 7; ECR, No. 15 at p. 4; Ice Air, No. 25 at p. 4; Cold Point, No. 18 at p. 2)

DOE also received comments about the potential for creating a loophole by adopting Addendum t in the final rule. In this regard, these commenters supported DOE's adoption of an alternative definition for non-standard size PTACs and PTHPs.

Specifically, General Electric (GE) and the American Council for an Energy Efficient Economy (ACEEE) recommended that DOE modify the non-standard definitions and equipment classes to have the wall sleeve dimension requirements set significantly below the proposed dimensions, consistent with the non-standard size equipment currently on the market. (Public Meeting Transcript, No. 12 at pp. 16 (GE), 33–34 (GE), 36–37 (ACEEE), 208 (ACEEE); GE, No. 8 at p. 2; GE, No. 20 at pp. 2–3) GE asked DOE to make the difference in the wall sleeve dimensions of standard size and non-standard size PTACs and PTHPs large enough to prevent non-standard PTACs/PTHPs from being installed in standard size PTAC and PTHP openings. GE used the example of a PTAC (15.75×41.75 inches) that GE believes could easily fit inside a standard size PTAC wall sleeve, yet this unit would be classified as non-standard size equipment subject to less stringent energy conservation standards. (Public Meeting Transcript, No. 12 at pp. 16, 33–34; GE, No. 8 at p. 2)

GE stated that the wording in Addendum t might encourage the design of new PTAC and PTHP equipment that may circumvent the intent of DOE's regulations. (Public Meeting Transcript, No. 12 at pp. 16, 33–34; GE, No. 8 at p. 2) As an alternative, GE suggested DOE use the wall sleeve dimensions of the largest non-standard size PTAC and PTHP equipment currently on the market to define non-standard size PTACs and PTHPs. (Public Meeting Transcript, No. 12 at p. 33)

ECR, McQuay, and AHRI responded to concerns about the potential for a loophole for less efficient standard size equipment to enter the market if DOE adopts the delineations in Addendum t. (ECR, No. 15 at pp. 1, 4; Public Meeting Transcript, No. 12 at pp. 20 (ECR), 22 (AHRI), 31–32 (AHRI), 38 (McQuay)) AHRI stated that the same potential loophole exists in the delineations within ASHRAE Standard 90.1–1999 for standard size and non-standard size PTACs and PTHPs. AHRI commented that if manufacturers want to introduce less efficient standard size equipment with wall sleeve dimensions just shy of the standard size limitations, manufacturers would have introduced this type of equipment already because this loophole has been in existence since 1999. However, AHRI pointed out that none of the manufacturers in the PTAC and PTHP industry have taken

[6] The Air-Conditioning and Refrigeration Institute (ARI) and the Gas Appliance Manufacturers Association (GAMA) announced on December 17, 2007, that their members voted to approve the merger of the two trade associations to represent the interests of cooling, heating, and commercial refrigeration equipment manufacturers. The merged association became AHRI on Jan. 1, 2008.

[7] A notation in the form ''ECR, Public Meeting Transcript, No. 12 at pp. 30, 37, 182'' identifies (1) an oral comment that DOE received during the May 30, 2008, NOPR public meeting by ECR, which was recorded in the public meeting transcript in the docket for this rulemaking as comment number 12; and (2) a passage that appears on page 30 of that transcript.

advantage of this potential loophole. AHRI also noted that Addendum t requires non-standard size equipment to be labeled to prevent misapplications of less efficient non-standard equipment entering into newly constructed projects. (AHRI, No. 23 at pp. 6–7)

ECR also commented that it does not believe that non-standard size equipment will be used in newly constructed buildings. ECR stated that commercial customers would not purchase non-standard equipment because it is rated at lower efficiencies; rather, customers make purchases based on the characteristics and needs of the installation (*i.e.*, wall sleeve dimensions). Placing non-standard size equipment in newly constructed buildings does not make economic sense. (ECR, No. 15 at pp. 1, 4; Public Meeting Transcript, No. 12 at p. 20) McQuay pointed out that non-standard equipment is needed to meet a specific demand that exists in the market, particularly for older buildings, and that phasing out the market would decrease competition and limit customer choices. (Public Meeting Transcript, No. 12 at p. 38) If DOE were to adopt the delineations within ASHRAE Standard 90.1–1999, ECR believes building owners and commercial customers would keep their older, much less efficient units in place longer because replacements could become unavailable. (ECR, No. 15 at p. 1)

On June 22, 2008, ASHRAE Standard 90.1's committee voted to officially approve the publication of Addendum t to ASHRAE Standard 90.1–2007 for PTACs and PTHPs.[8] This action finalizes Addendum t, which means that DOE can officially use this delineation as the basis for amended energy conservation standards. (42 U.S.C. 6313(a)(6)(A)(ii))

DOE divides equipment classes by the type of energy used or by capacity or other performance-related features that affect efficiency. Different energy conservation standards may apply to different equipment classes. (42 U.S.C. 6295(q)) When installed, PTACs and PTHPs are fitted into a wall sleeve. There is a wide variety of wall sleeve sizes found in different buildings. Wall sleeve sizes are market driven (*i.e.*, the applications or facilities where the PTACs or PTHPs are installed is what determines the ''market standard'' wall sleeve dimension) and this factor requires manufacturers to offer various PTACs and PTHPs that can fit into various wall sleeve dimensions. For new units, the industry has standardized the wall sleeve dimension for PTACs and PTHPs in buildings over the past 20 years to be 16 inches high by 42 inches wide. Therefore, units that have a wall sleeve dimension of 16 inches high by 42 inches wide are considered ''standard size'' equipment and all other units are considered ''non-standard size'' equipment. In contrast, the industry does not have a common wall sleeve dimension that is typical for all older existing facilities. These facilities, such as high-rise buildings found in large cities, typically use non-standard size equipment. In these installations, altering the existing wall sleeve opening to accommodate the more efficient, standard size equipment could include extensive structural changes to the building, which could be very costly, and is, therefore, rarely done.

DOE believes that wall sleeve sizes are performance-related features that affect PTAC and PTHP efficiency. Manufacturers typically use various heat exchanger sizes in different wall sleeve size equipment, and the size of the heat exchanger directly affects the energy efficiency of the equipment. By examining the market data, DOE found that non-standard size PTACs and PTHPs typically are less efficient than standard size PTACs and PTHPs. Consequently, DOE is adopting the delineations in Addendum t to ASHRAE Standard 90.1–2007 to differentiate between standard size and non-standard size equipment.

DOE believes the delineations within Addendum t will help to mitigate the impacts on manufacturers of non-standard size equipment, and will not cause any equipment unavailability issues for commercial customers. DOE was concerned that, absent non-standard equipment, commercial customers could be forced to invest in costly building modifications to convert non-standard sleeve openings to standard size dimensions. Alternatively, customers may choose to use less efficient through-the-wall air conditioners or maintain their older, less efficient equipment longer in the absence of non-standard PTACs and PTHPs.

Although DOE acknowledges GE's and ACEEE's concern about the potential loophole in the definition, DOE believes that the effects of this loophole will be reduced due to the labeling requirements specified in Addendum t. DOE is not adopting the labeling requirement set forth in Addendum t, but believes that non-standard manufacturers will still be required to use this labeling through some of their State building code regulations, which require the use of such labels on PTAC and PTHP equipment. DOE believes ASHRAE's labeling requirement will deter less efficient equipment from entering into newly constructed buildings.

Additionally, DOE agrees with AHRI's assertion that if manufacturers wanted to introduce less standard size equipment with wall sleeve dimensions just shy of the standard size limitations they could have done this in today's market. DOE believes the market forces surrounding the standardized sleeve size have deterred standard size manufacturers from producing this type of equipment because of the unique non-standard size industry and the cost implications of producing customized equipment. Further, DOE believes these market forces will continue to deter standard size manufacturers from taking advantage of this potential loophole after the adoption of the delineations in Addendum t to ASHRAE Standard 90.1–2007.

In today's final rule, DOE incorporates the following definitions of standard size and non-standard size PTACs and PTHPs as presented in Addendum t to ASHRAE Standard 90.1-2007:

- *Standard size* refers to a PTAC or a PTHP with wall sleeve dimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and having a cross-sectional area greater than or equal to 670 square inches.
- *Non-standard size* refers to a PTAC or a PTHP with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and having a cross-sectional area less than 670 square inches.

DOE added these two definitions of standard size and non-standard size to be codified at 10 CFR 431.2. Consistent with the definitions, DOE has defined the equipment classes for today's final rule for PTACs and PTHPs (as shown in Table IV.1).

[8] To obtain a copy of Addendum t to ASHRAE Standard 90.1–2007, contact the ASHRAE publications department at: *orders@ashrae.org* or 1–(800) 527–4723.

TABLE IV.1—EQUIPMENT CLASSES FOR PTACS AND PTHPS IF ASHRAE ADOPTS ADDENDUM TO ASHRAE STANDARD 90.1–2007

Equipment class		
Equipment	Category	Cooling capacity (Btu/h)
PTAC	Standard Size *	<7,000 7,000–15,000 >15,000
	Non-Standard Size **	<7,000 7,000–15,000 >15,000
PTHP	Standard Size *	<7,000 7,000–15,000 >15,000
	Non-Standard Size **	<7,000 7,000–15,000 >15,000

* Standard size refers to PTAC or PTHP equipment with wall sleevedimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and having a cross-sectional area greater than or equal to 670 square inches.

** Non-standard size refers to PTAC or PTHP equipment with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and having a cross-sectional area less than 670 square inches.

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency, to determine which technologies to consider further, and which to screen out. In developing the screening analysis for the NOPR, DOE consulted with a range of parties, including industry, technical experts, and others to develop a list of technologies for consideration. DOE then applied the four screening criteria to determine which technologies are unsuitable for further consideration in the rulemaking (10 CFR part 430, subpart C, appendix A4.(a)(4) and 5.(b)). DOE presented its results of the screening analysis in the NOPR and in Chapter 4 of the NOPR TSD. In response to the NOPR, DOE received one comment about the technology options that it considered in the screening analysis.

ACEEE commented that DOE should not have screened out some of the technology options. Instead, DOE should have further considered these options in the engineering analysis. (Public Meeting Transcript, No. 12 at pp. 49–52, 64–65) ACEEE stated that DOE neglected to examine other types of compressors (such as scroll compressors), electronically commutated motor (ECM) fans, clutched fan motors, micro-channel heat exchangers, and thermostatic expansion valves (TXVs). According to ACEEE, the compressor choices for PTACs should not be different from those used for residential refrigerators because the loads are similar. ACEEE added that micro-channel heat exchangers allegedly cost less to implement, require less refrigerant and space, and have been used in air conditioning applications within automobiles. (Public Meeting Transcript, No. 12 at pp. 50–51)

1. Scroll Compressors

As presented in Chapter 4 of the NOPR TSD, scroll compressors are an alternative to rotary compressors in air-conditioning applications. Scroll compressors are more efficient than rotary compressors at higher cooling capacities than are typically found in packaged terminal equipment. Whereas rotary compressors use a rotating motion to compress refrigerant gases, scroll compressors use two nutating spirals—one fixed and the other rotating. Although scroll compressors can be more efficient than rotary compressors, they typically are more expensive, heavier, and larger than rotary compressors of the same cooling capacities.

After reviewing publicly available equipment literature and specifications for scroll compressors currently available on the market, DOE determined that manufacturers typically produce scroll compressors with cooling capacities of approximately 20,000 Btu/h or higher, and that the majority of equipment using scroll compressors is typically rated at capacities higher than 40,000 Btu/h. Manufacturers also produce scroll compressors with housings larger than those used for compressors found in PTACs and PTHPs. DOE found that scroll compressors are typically built to be 16 inches or higher in height and that capacity ratings do not impact scroll compressor heights significantly. For example, DOE found that the height of a scroll compressor only decreases by approximately 1.5 inches when capacity decreases from 80,000 to 20,000 Btu/h. However, significant improvements in efficiency, when compared to rotary compressors, are generally achieved with higher capacity models. DOE's market review also found that scroll compressors weigh more than PTAC and PTHP compressors. Scroll compressors typically weigh 50 pounds or more, compared with the 25 to 30 pounds for a PTAC/PTHP rotary compressor found in PTACs and PTHPs.

Ultimately, DOE screened out scroll compressors as a viable design option. As stated in the NOPR and subsequently confirmed by DOE using updated data, manufacturers do not produce scroll compressors for PTAC and PTHP applications, making it unlikely that this technology option could be readily applied to these products. DOE also screened out scroll compressors because their manufacturers have yet to produce a full line of scroll compressors that meet the size limitations, capacity requirements, and voltage requirements of packaged terminal equipment. The size limitation is particularly problematic when given the installation limitations of the sleeve sizes for PTACs and PTHPs.

2. ECM Motors

As presented in Chapter 4 of the NOPR TSD, there are multiple types of electric fan motors that manufacturers

can choose from to blow air over the condenser and evaporator coils. Since the PTAC and PTHP industries have a relatively small number of annual shipments, manufacturers typically have to choose their motors from existing motor lines, rather than having motors customized for their specific needs. The type of motor and its power rating are typically indicative of its efficiency. For example, shaded pole motors are generally the lowest efficiency motors that are available, particularly at very low power levels. By contrast, the electronically commutated motors (ECM) or brushless permanent magnet motors (BPMs) are typically the most efficient motors for the low power levels.

DOE determined that the PTAC and PTHP industries have not adopted ECMs or similar high efficiency motors due to size and weight constraints. The size limitation is particularly problematic when given the installation limitations of the sleeve sizes for PTACs and PTHPs, particularly for non-standard PTACs. Ultimately, DOE screened out high efficiency motors as a viable design option. As stated in the NOPR and subsequently confirmed by DOE using updated data and through discussions with industry experts, DOE found high efficiency motors are not available in the full ranges of sizes needed for the PTAC and PTHP industries making it unlikely that this technology option could be readily applied to these products. DOE believes that, given these circumstances, it would not be practical to manufacture, install, and service this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard.

3. Fan Motors

ACEEE commented on clutched fan motors, but DOE did not consider this technology. Although the automotive industry uses clutched fans to engage and disengage a vehicle's cooling fan from the belt driven by the engine, using a clutched fan would not provide appreciable benefits within the energy efficiency context. In theory, these devices would work with PTACs and PTHPs to reduce the load on a single fan motor used to drive both the evaporator and the condenser fan blades when the refrigerating system is not operating by disengaging the condenser fan. In this way, power input could be reduced during times when only the indoor blower is running to recirculate air, or when electric resistance heating is being provided. However, the measure of energy use for PTACs in cooling mode is based on full cooling operation, in which both the indoor blower and the condenser fan must operate. Hence, including a clutched condenser fan would not provide measurable energy efficiency benefits.

4. Micro-Channel Heat Exchangers

As presented in Chapter 4 of the NOPR TSD, micro-channel heat exchangers have a rectangular aluminum cross-section containing several small channels through which refrigerant passes. Aluminum fins with a corrugated shape are brazed at a 90-degree angle between the rectangular tubes. Micro-channel heat exchanger designs provide more heat transfer per volume of heat exchanger core and can provide more heat transfer per unit of face area. In addition, these designs have lower airside pressure drop than similarly performing conventional coils, which reduces the fan power requirement. The small size and lower airside pressure drop that results from micro-channel heat exchangers provide opportunities to reduce the size and weight of the heat exchanger. This explains the frequent use of micro-channel heat exchangers in automobile air-conditioning systems, where their small size and high performance allow car designers to minimize air resistance by lowering the leading edge of the car.

As stated in the NOPR TSD, DOE screened out micro-channel heat exchangers from the engineering analysis. 73 FR 18869–70. Through review of publicly available literature, product specifications, and discussions with manufacturers, DOE determined that micro-channel heat exchangers have inherent problems with performance and condensate removal when installed in PTAC equipment. In particular, manufacturers observed that the smaller airflow passages between plate fins are subject to clogging in installations where debris is present, which can affect both the heat exchanger and fan motor performance. Additionally, for PTACs and PTHPs operating in cooling mode, condensate buildup on the evaporator of the installation may result in icing, which is harder to remove from small horizontal micro-channel heat exchanger passages than from the vertical fins found in the currently used tube and fin heat exchangers.

For the reasons stated above, manufacturers have chosen not to install micro-channel heat exchangers in PTAC and PTHP designs. DOE determined that this technology has not yet penetrated the PTAC and PTHP industry and that design challenges still exist. At this time, DOE believes microchannel heat exchangers are technologically infeasible in PTAC and PTHP applications. DOE understands that manufacturers are conducting research into the use of micro-channel heat exchangers in their PTACs and PTHP design at this time. However, DOE does not have definite knowledge of whether their research efforts will be successful, of when mirco-channel heat exchangers could appear in either prototypes or equipment designs, and what the cost implications would be and the contribution to system performance would be. Because this technology is in the research stage for the PTAC industry, it is also not possible to assess whether it will have any adverse impacts on equipment utility to customers or equipment availability, or on customer health or safety.

5. Thermal Expansion Valves

Regarding ACEEE's comments about TXVs, DOE did not consider this technology for PTACs or PTHPs. TXVs are expansion devices that meter the flow of refrigerant from the condenser to the evaporator at a rate equivalent to the amount of refrigerant being boiled off in the evaporator. For example, when the evaporator is exposed to high temperatures, the TXV will open to allow faster flow of refrigerant to match the higher boiling rate caused by higher temperatures. Alternatively, for lower temperatures, the TXV will reduce the flow rate to match the lower boiling rate caused by cooler temperatures. Typically, TXVs are installed in central air conditioning applications where equipment is rated with the seasonal energy efficiency ratio (SEER) metric and testing occurs at various operating conditions and temperatures. In contrast, PTACs and PTHPs are measured using the EER metric, with testing occurring at a constant temperature of 95 degrees F. Therefore, the energy efficiency benefits of a TXV will not affect the EER rating of a PTAC because the orifice of the TXV and the flow of refrigerant would remain constant during testing. Therefore, DOE does not consider TXVs to be a technology for improving the EER of PTACs and PTHPs.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the cost and efficiency of PTACs and PTHPs and to show the manufacturing costs required to achieve that increased efficiency level. As detailed in the NOPR, DOE's engineering analysis for PTACs and PTHPs estimated the baseline manufacturer cost, as well as the incremental cost for equipment at

efficiency levels above the baseline. 73 FR 18870–74. DOE presented its engineering analysis in the NOPR, which included a discussion on the approach, the equipment classes analyzed, the cost model, the baseline equipment, the alternative refrigerant analysis, the cost efficiency results, and mappings of the EER and COP values. In response to DOE's presentation of the engineering analysis in the NOPR, DOE received comments on the following topics: Standard size equipment performance in systems using R–410A refrigerant, max-tech efficiency levels analyzed for standard size equipment, energy-efficiency equations for standard size equipment, max-tech efficiency levels analyzed for non-standard size equipment, energy-efficiency for non-standard size equipment, compressor availability, and the manufacturer production cost increases with the introduction and use of R–410A. DOE discusses each of these topics and the updates to the cost model for the final rule in the subsections below.

1. Material Prices for the Cost Model

In the NOPR analyses, DOE used five-year average material prices from years 2002 through 2006. 73 FR 18871. For the final rule, DOE updated the five-year averages to include material price data from 2007 and 2008. DOE uses a five-year span to normalize the fluctuating prices experienced in the commodities market to screen out temporary dips or spikes. DOE believes a five-year span is the longest span that would still provide appropriate weighting to current prices experienced in the market.

DOE basis for its belief relies on updated commodity pricing data, which point to continued increases. For example, the 5-year time period ending in mid-2008 has higher commodity indices than a 5-year ending in mid-2006 by 10 percent, 28 percent, and 45 percent for All Commodities, Steel, and Copper, respectively.[9] Considering the significant amount of steel and copper in each PTAC or PTHP, incorporating commodity prices that reflect 5-year average prices as close to the current conditions best reflect the market conditions. DOE believes it is appropriate to use prices from 2007 and 2008 in the data span because it more closely represents current PTAC and PTHP material prices and manufacturing conditions. DOE calculated a new five-year average materials price for cold rolled steel, aluminized steel, galvanized steel, painted cold rolled steel, and stainless steel. DOE used the U.S. Department of Labor's Bureau of Labor Statistics (BLS) Producer Price Indices (PPIs) for various materials from 2004 to 2008 to calculate new averages, which incorporate the changes within each material industry and inflation. Finally, DOE adjusted all averages to 2007$ using the gross-domestic-product implicit-price deflator.

As was the case for the NOPR, DOE developed a material-price-sensitivity analysis. DOE used the annual average price for each of the raw materials from 2008 to calculate the current manufacturing product costs (MPCs). DOE expressed the material price sensitivity results in 2007$. The results for the material-price-sensitivity analysis are presented in Chapter 5 of the final rule TSD.

2. Impacts of the Refrigerant Phaseout on PTAC and PTHP Equipment Performance

a. Standard Size Equipment Performance in Systems Using R–410A Refrigerant

GE commented that R–410A refrigerant has been in use for years by the air conditioning industry. Even though GE believes switching to R–410A refrigerant in PTAC and PTHP equipment will have a negative impact on system efficiency, GE believes the difference can be made up with a combination of higher efficiency compressors, motors, as well as increases in heat exchanger size. GE stated that manufacturers have been aware of the future requirements and should be far along with developments and designs to meet both amended energy conservation standards and R–410A requirements. GE also pointed out that one manufacturer has produced an R–410A PTHP that exceeds the proposed energy conservation standard level in the NOPR (i.e., 11.5 EER for standard equipment) and is currently available on the market. (GE, No. 20 at pp. 2–3; Public Meeting Transcript, No. 12 at pp. 17–18, 66) GE noted that it is finishing the design and test phase for several models and is confident that it can manufacture standard size R–410A PTACs and PTHPs at TSL 4 efficiency levels (i.e., the proposed energy conservation standards for PTHPs in the NOPR). GE added that achieving an efficiency level that is 10 percent higher than the proposed standard for a potential ENERGY STAR category is also possible with existing technology. (GE, No. 20 at p. 3; Public Meeting Transcript, No. 12 at p. 66)

In addition to comments from manufacturers of standard size PTACs and PTHPs, DOE also received confidential performance test data that characterizes the equipment performance degradations in standard size PTACs and PTHPs using R–410A refrigerant. The confidential data DOE received regarding standard size equipment performance suggests the performance degradation can vary greatly depending upon the cooling capacity of the equipment. DOE further addresses comments from interested parties and its analysis of the variation in standard size equipment performance with changes in cooling capacity in DOE's discussion of the energy-efficiency equations, below.

DOE reviewed the data submitted by manufacturers and comments from interested parties and found, in general, the system performance degradations for PTAC and PTHP equipment with R–410A, as described in the NOPR, were in the middle of the range of the submitted data. For today's final rule, DOE used the same system performance degradations for PTAC and PTHP equipment with R–410A refrigerants as described in the NOPR. 73 FR 18873. Because standard size PTAC and PTHP equipment utilizing R–22 refrigerants exists at efficiency levels well above the efficiency levels in ASHRAE Standard 90.1–1999, DOE believes that manufacturers will be able to produce equipment utilizing R–410A at efficiency levels specified by ASHRAE Standard 90.1–1999 and higher efficiency levels in 2012. As GE noted, one standard size manufacturer is already producing R–410A equipment at efficiency levels above ASHRAE Standard 90.1–1999 efficiency levels. Lastly, the comments submitted by GE establishes that PTAC and PTHP prototypes utilizing R–410A refrigerant have been developed and will be able to meet the proposed efficiency levels, *i.e.*, TSL 4, for standard size PTACs and PTHPs.

As DOE reviewed the data submitted by interested parties, DOE generally found larger performance degradations at higher cooling capacities for standard size equipment. As a PTAC or PTHP increases in capacity, manufacturers typically increase the surface area or add a row to the heat exchanger in order to increase unit capacity. Even at larger cooling capacities, manufacturers have to maintain the same physical box sleeve, leaving little space for additional efficiency modifications (*e.g.*, adding heat exchanger area). DOE considered the effects of the R–410A refrigerant

[9] Bureau of Labor Statistics (BLS) for Copper (WPU102502), Cold Rolled Steel (WPU101707), and All Commodities (WPU00000000) as tracked in the Producer Price Index (PPI) database of the BLS. To download the data or to discover how it is gathered, please see *http://www.bls.gov*.

phaseout on the entire range of cooling capacities as part of the generation of the energy-efficiency equations that translates the results for the representative cooling capacities to the entire cooling capacity range. See section IV.C.2.c for additional details on how DOE extended the results for the representative cooling capacities to the full range of cooling capacities for standard size PTACs and PTHPs.

b. ''Max-Tech'' Efficiency Levels Analyzed for Standard Size Equipment

AHRI and the People's Republic of China, through its WTO/TBT National Notification and Enquiry Center (PRC), commented that the max-tech levels are inaccurate because they are based on R–22 refrigerant and there is no equipment in the 2008 AHRI Directory of Certified Product Performance (AHRI Certified Directory) [10] operating with R–410A refrigerant. AHRI and the PRC also commented about the difficulty in reaching the max-tech efficiency levels with R–410A refrigerant and assert that attaining those efficiency levels is not possible at this time. (Public Meeting Transcript, No. 12 at pp. 168–169; PRC, No. 17 at p. 3)

DOE agrees that with the prohibition on R–22 refrigerant, and the expected use of R–410A refrigerant as the most likely alternative, system performance will decline. The max-tech efficiency level should be based on the most likely refrigerant, which is R–410A. Accordingly, DOE revised the max-tech efficiency levels for standard size PTACs and PTHPs in the final rule analysis. DOE applied the system performance degradations described in the NOPR to the AHRI certified market data for standard size equipment. (See graphs in Chapter 5 of the final rule TSD.) DOE used the modified market data to estimate the max-tech efficiency levels corresponding to current models utilizing R–410A and has identified these efficiency levels in section III.B for the representative cooling capacities. DOE estimates that these performance degradations will fall within five to eight percent depending on cooling capacity when compared to an R–22 baseline.

c. Energy-Efficiency Equations for Standard Size Equipment

In response to the NOPR, DOE also received a comment on its approach for calculating the energy efficiency equations for standard size PTACs and PTHPs. Carrier commented that the engineering extrapolations might not provide an accurate view of the max-tech efficiency levels for larger size equipment. In particular, Carrier commented that the PTAC efficiency levels proposed in the NOPR are achievable, but the PTHP proposed efficiency levels in the NOPR may be unachievable in equipment with a cooling capacity of 12 kBtu/h and above. (Carrier, No. 16 at p. 2)

DOE further considered the effects of R–410A on system performance for larger cooling capacities in the engineering analysis. DOE found that as a standard size PTAC or PTHP increases in capacity, manufacturers typically increase the coil surface area or add a coil row to the heat exchanger in order to increase unit capacity. Manufacturers of standard size PTACs and PTHPs maintain the same physical box sleeve (*i.e.*, 42 inches by 16 inches) across all models regardless of cooling capacity. This sleeve size is an established common sleeve size that allows standardization across the industry. This common sleeve size allows end-users to simply slide replacement units into existing wall sleeve openings. However, the standard size wall sleeve imposes a limitation on the total volume available into which all components must fit. Manufacturers add heat exchanger coil area or coil volume to either increase the cooling capacity or to obtain higher efficiencies. This fixed volume limits the size of the box into which the unit's components must fit. In turn, this fixed volume limits the size of heat exchangers and other components that can be used to increase efficiency and there are accompanying decreases in thermodynamic returns when making such changes. Thus, higher capacity units often have lower energy efficiency potentials due to the size constraints of the box sleeve.

In order to consider the effects of the refrigerant phaseout on larger capacity units, DOE reviewed the market data for standard size equipment in the AHRI Certified Directory. DOE applied the efficiency degradations distinguished by cooling capacity ranges estimated in the engineering analysis to each of the models in the AHRI Certified Directory. DOE used these data to estimate the overall system performance of the models in the AHRI Certified Directory utilizing R–410A refrigerant. From these data, DOE plotted each TSL it considered as part of the final rule to see if there were models in the full range of cooling capacity with estimated performance utilizing R–410A refrigerant that would meet the TSL being considered.

For TSL A, which is the amended standard level for standard size PTACs and PTHPs, DOE adjusted the slope of the energy-efficiency equation from the revised slopes calculated in the NOPR for TSLs 1 through 7. This adjustment was based on manufacturer comment and DOE data pointing to the reduced opportunities for achieving greater efficiencies for larger capacity PTAC and PTHP equipment. By revising the slope in this manner, DOE could create and ultimately, adopt, a standard level that is more stringent for lower cooling capacities, where manufacturers have additional physical space to add efficiency improvements, but is less stringent for higher cooling capacities, where manufacturers are physically constrained by the physical dimensions of the box sleeve and less able to introduce efficiency improvements. See Chapter 9 of the final rule TSD for additional details and graphic demonstrations of the energy-efficiency equations for each TSL, including today's amended energy conservation standard for standard size PTACs and PTHPs.

d. Efficiency Levels Analyzed for Non-Standard Size Equipment

In the NOPR, DOE explicitly analyzed one cooling capacity of non-standard equipment (i.e., 11,000 Btu/h). Based upon this cooling capacity, DOE demonstrated a typical design option pathway a manufacturer could use to increase the efficiency of its non-standard PTAC and PTHP equipment. To account for the potential loss of system efficiency as a result of the R–22 refrigerant phaseout, DOE applied an overall system degradation of 6.8 percent, which effectively shifted the cost-efficiency curve to the left (in the direction of decreasing efficiency for the same cost). Thus, for any given efficiency level, the MPC increase will be greater when R–410A refrigerants are used. By degrading expected system performance, DOE accounts for the shift in the baseline performance that a system converted to R–410A use typically exhibits. Using the design option pathway described in the engineering analysis, the maximum efficiency level analyzed is 10.0 EER for non-standard equipment with a cooling capacity of 11,000 Btu/h using R–410A.

e. Energy-Efficiency Equations for Non-Standard Size Equipment

In response to the NOPR, DOE received several comments on its approach for calculating the energy-efficiency equations for non-standard

[10] The Air-Conditioning, Heating and Refrigerating Institute, *Directory of Certified Product Performance for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps.* 2008. <*http://www.ahridirectory.org/ahriDirectory/pages/home.aspx*>.

size PTACs and PTHPs. Specifically, DOE retained the ASHRAE Standard 90.1–1999 slope from the energy-efficiency equation, which characterizes the relationship between EER and cooling capacity for non-standard PTACs and PTHPs in the NOPR. 73 FR 18890–91.

ECR and AHRI commented that they are particularly concerned about reaching the efficiency levels for the larger capacity, non-standard size equipment. (AHRI, No. 23 at pp. 4–5; Public Meeting Transcript (ECR), No. 12 at p. 170) ECR specifically commented that it is concerned about the methodology DOE used to develop the energy-efficiency equations for non-standard equipment. (ECR, No. 15 at p. 2) ECR and Ice Air commented that the proposed energy conservation standard for non-standard PTHPs is too high for all capacities considering the system performance degradations from switching to R–410A refrigerant. (Public Meeting Transcript, No. 12 at pp. 56–60; Ice Air, No. 25 at p. 2)

DOE further considered the effects of R–410A on system performance in the engineering analysis for larger cooling capacities of non-standard PTACs and PTHPs. As explained above, DOE found that as a non-standard size PTAC or PTHP increases in capacity, manufacturers typically increase the coil surface area or add a coil row to the heat exchanger in order to increase unit capacity. The fixed volume of the box sleeve imposes a physical limit on the size of heat exchangers and other unit components that can be used to increase efficiency. Thus, higher capacity units often have lower energy efficiency potential due to the size constraints of the box.

In order to consider the effects on larger capacity units, DOE reviewed the market data for non-standard size equipment in manufacturer equipment catalogs. DOE applied the efficiency degradations distinguished by cooling capacity ranges estimated in the engineering analysis to each of the non-standard models offered for sale and described in manufacturer equipment catalogs. DOE used this data to estimate the overall system performance of the models on the market utilizing R–410A refrigerant. DOE was able to plot each of the TSLs it considered as part of the final rule (i.e., TSL 1 through 5) to see if there were models in the full range of cooling capacities with estimated performance utilizing R–410A refrigerant that would meet the TSL being considered. These plots demonstrated the specific cooling capacities where the TSL or amended standard would be eliminating all of the models from the market using the estimated R–410A performance. See Chapter 9 of the final rule TSD for additional details and graphic demonstrations of the energy-efficiency equations for each TSL, including today's amended energy conservation standard for non-standard size PTACs and PTHPs.

DOE further considered the effects of the refrigerant phaseout on larger cooling capacities when weighing the benefits and the burdens for non-standard equipment. See section V.D for additional information.

f. Compressor Availability

AHRI, Carrier, Ice Air, ECR, and Goodman stated that the true impact on PTAC and PTHP equipment efficiency levels cannot currently be assessed because the lack of available components across the range of equipment capacities prevents comprehensive equipment testing. These manufacturers also stated that R–410A compressors are not available in all required capacities and voltages. Further, compressor manufacturers have not committed to improving compressor performance of rotary compressors. (Public Meeting Transcript (ECR), No. 12 at p. 68–69; Public Meeting Transcript (Goodman), No. 12 at p. 174; AHRI, No. 23 at p. 4; Carrier, No. 16 at p. 5; Ice Air, No. 25 at pp. 1–2)

As DOE presented in the NOPR, DOE found the availability of R–410A compressors in a wide range of efficiencies and voltages remains uncertain. Several compressor manufacturers make R–22 PTAC and PTHP compressors of different capacities, voltages, and efficiencies for standard and non-standard equipment. As the market transitions to the use of R–410A, manufacturers may only develop and offer one line of compressors for PTACs and PTHPs. In engineering interviews conducted for the NOPR, compressor manufacturers commented on the uncertainties surrounding R–410A compressors and their performance characteristics when compared to R–22 compressors. 73 FR 18874. DOE noted in the NOPR that compressor manufacturers stated in interviews that they expect to offer R–410A compressors at only one efficiency level in the initial stages of the R–22 refrigerant phaseout, which could further reduce compressor options for PTAC and PTHP manufacturers. *Id.*

In response to comments and the uncertainty surrounding compressor options for manufacturers, DOE gave particular attention to the PTAC and PTHP efficiency levels that cannot be met with current technologies and practices with R–410A in weighing the benefits and burdens of the various TSLs. However, DOE notes that GE stated its working prototypes have experienced significantly less performance degradation due to R–410A conversion than was modeled in the engineering analysis. (GE, No. 20 at p. 2) Based on manufacturer feedback during interviews and historic precedent in other air-conditioning markets where similar refrigerant transitions have taken place, DOE acknowledges that the R–410A compressors available for use in PTAC and PTHP equipment could be less efficient than similar compressors that use R–22 refrigerant at the time of the R–22 phaseout. Even though DOE received comments during engineering interviews stating compressor manufacturers may only offer one rotary compressor line when the refrigerant phaseout occurs, DOE believes compressor manufacturers will continue their development efforts and eventually offer compressors in the full range of cooling capacities, voltages, and efficiencies as they do today. Similar market transformations have occurred in other industries and while the initial set of compressors were less efficient, the markets eventually matured to offer manufacturers a variety of compressors. See Chapter 5 of the TSD for additional information. In addition, DOE believes the amended energy conservation standards being adopted in today's final rule will aid the PTAC and PTHP industry and provide compressor manufacturers with target efficiencies for which they can concentrate their research and development efforts.

3. Manufacturer Production Cost Increases With R–410A

Goodman stated that DOE's estimate of a two percent manufacturing cost increase for converting standard size PTAC and PTHP equipment to utilize R–410A refrigerant is too low. (Public Meeting Transcript, No. 12 at pp. 46–47, 74)

Goodman misstates DOE's estimate. DOE did not use a two percent cost increase. To derive the baseline MPCs for the R–410A PTACs and PTHPs used in the NOPR, DOE estimated the R–410A refrigerant pricing, R–410A compressor pricing, as well as other design changes necessary to accommodate the alternative refrigerant, and incorporated them into the same cost model used for the R–22 engineering analysis. Based on technical journals and manufacturer interviews, DOE increased the tube wall thicknesses of all heat exchangers by 25 percent to

account for the higher pressures associated with R–410A refrigerant. DOE also used a refrigerant price for R–410A based upon cost estimates from refrigerant suppliers and engineering interviews with manufacturers. During engineering interviews, PTAC and PTHP equipment and component manufacturers stated that compressor prices would increase between 10 percent and 20 percent from current R–22 compressor prices. To incorporate manufacturers' comments, DOE estimated that compressor costs would increase by 15 percent. Using the above estimates, DOE calculated the baseline manufacturer selling price (MSPs) [11] of R–410 standard size equipment to be at least 10 percent more than its' R–22 counterpart, on average. See Chapter 5 of the final rule TSD for additional details of the R–410A analysis and results. See TSD, Chapter 5, Section 5.8 (detailing representative capacities of standard size equipment using R–410A).

Accordingly, DOE believes Goodman's statement mischaracterizes the estimated manufacturing cost increases in the NOPR. DOE has continued to use the same methodology as presented in the NOPR to develop the R–410A manufacturer production costs for both standard size and non-standard size equipment. After DOE revised the cost model in response to comments from interested parties, DOE calculated the baseline MSPs to be at least 15 percent more than its R–22 counterpart, on average, for standard size PTAC and PTHP equipment. Additional details and results can be found in section 5.8 of Chapter 5 of the final rule TSD.

D. Energy Use Characterization

The building energy use characterization analysis assessed the energy savings potential of PTAC and PTHP equipment at different efficiency levels. The analysis estimates the energy use of PTACs and PTHPs at specified energy efficiency levels through energy use simulations for key commercial building types across a range of climate zones. The energy simulations yielded hourly estimates of building energy consumption, including lighting, plug loads, and air-conditioning and heating equipment. The analysis extracted the annual energy consumption of the PTACs and PTHPs for use in subsequent analyses, including the LCC, PBP, and NES.

DOE did not consider a rebound effect in the final rule analysis when determining the reduction in energy consumption of PTAC and PTHP equipment due to increased efficiency. The rebound effect occurs when a piece of equipment is made more efficient such that the operating costs come down to a point that either the use of the product increases or the market increases, resulting in lower than expected energy savings. Because the user of the equipment (*e.g.*, the customer in a hotel room) does not pay the utility bill, DOE assumed that increasing the efficiency of the equipment will not affect the usage or market for the equipment and, as a result, no rebound effect would occur. DOE requested comment on this assumption in the NOPR. 73 FR 18876. The commenters all agreed that there would be no rebound effect for PTACs and PTHPs. (Public Meeting Transcript (ECR), No. 12 at p. 138, GE, No. 8 at p. 2, Carrier, No. 16 at p. 2) Based on the above, DOE did not incorporate a rebound effect into the final rule analysis.

E. Life-Cycle Cost Analysis

For each efficiency level analyzed, the LCC analysis requires input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table IV.2 summarizes the inputs and key assumptions used to calculate the customer economic impacts of all energy efficiency levels analyzed in this rulemaking. DOE also calculated the PBP of the TSLs relative to a baseline efficiency level. The PBP measures the amount of time it takes the commercial customer to recover the assumed higher purchase expense of more energy efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and operating expenses, and is calculated as a range of payback periods depending on the probability distributions of the two key inputs (*i.e.*, the supply chain markups and where the unit is likely to be shipped). Unlike its calculation of the LCC, DOE's calculation of the PBP considered only the first year's operating expenses. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple payback period. Aside from the installation cost, the primary change for the final rule analysis affecting PBP is the electricity price forecasted for 2012 based on the 2007 EIA State energy price data and the AEO2008 electricity price forecasts. Chapter 8 of the TSD discusses the PBP calculation in more detail.

TABLE IV.2—FINAL RULE INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Inputs	NOPR description	Changes for final rule
Overall		
LCC Reporting	All cost inputs and LCC analysis and reporting done in 2006 dollars (2006$).	Updated cost inputs and LCC reporting to 2007 dollars (2007$).
Affecting Total Installed Cost		
Equipment Price	Derived by multiplying MSP (from the engineering analysis) by wholesaler markups and contractor markups plus sales tax (from markups analysis). Used the probability distribution for the different markups to describe their variability.	All MSPs updated to 2007. Updated wholesaler markup to use 2007 industry (Heating, Airconditioning and Refrigeration Distributors International (HARDI)) data. Sales tax data updated to 2008. Used State population weights to determine distribution of sales updated to 2007 census data.
Installation Cost	Includes installation labor, installer overhead, and any miscellaneous materials and parts, derived from *RS Means CostWorks 2007*.	Used *RS Means CostWorks 2008* data to update installation costs.

[11] This is the price at which the manufacturer can recover both production and non-production costs and earns a profit.

TABLE IV.2—FINAL RULE INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Inputs	NOPR description	Changes for final rule
Affecting Operating Cost		
Annual Energy Use	Derived from whole-building hourly energy use simulation for PTACs or PTHPs in a representative hotel/motel building in various climate locations (from energy use characterization analysis). Used annual electricity use per unit. Used the probability distribution to account for which State a unit will be shipped to, which in turn affects the annual energy use.	No change.
Electricity Price	Calculated average commercial electricity price in each State, as determined from DOE Energy Information Administration (EIA) data for 2006. Used the AEO2007 forecasts to estimate the future electricity prices. Used the probability distribution for the electricity price.	Used EIA data for 2007 to update the analysis for average electricity price by state. Used the AEO2008 electricity price forecasts to calculate future prices.
Maintenance Cost	Annual maintenance cost did not vary as a function of efficiency.	Annual maintenance costs updated to use *RS Means CostWorks 2008* data.
Repair Cost	Estimated the annualized repair cost for baseline efficiency PTAC and PTHP equipment as $15, based on costs of extended warranty contracts for PTACs and PTHPs (Chapter 8 of the TSD). Assumed that repair costs would vary in direct proportion with the MSP at higher efficiency levels because it generally costs more to replace components that are more efficient.	No change.
Affecting Present Value of Annual Operating Cost Savings		
Equipment Lifetime	Used the probability distribution of lifetimes, with mean lifetime for each of four equipment classes assumed to be 10 years based on literature reviews and consultation with industry experts.	No change.
Discount Rate	Mean real discount rates ranging from 5.7% for owners of health care facilities to 8.2% for independent hotel/motel owners. Used the probability distribution for the discount rate.	Used 2008 financial data discount rate calculations to update discount rates. Mean real discount rates ranging from 5.53% for owners of large motel/hotel chains to 8.14% for offices.
Date Standards Become Effective.	September 30, 2012 (4 years after the publication of the final rule).	No change.
Analyzed Efficiency Levels		
Analyzed Efficiency Levels	Baseline efficiency levels (ASHRAE Standard 90.1–1999) and five higher efficiency levels above the baseline for six equipment classes. (DOE also considered levels that were combinations of efficiency levels for PTACs and PTHPs.)	No change for standard size PTAC and PTHP equipment classes. Only three efficiency levels above the baseline analyzed for non-standard size equipment classes.

For this final rule, DOE did not introduce changes to the life-cycle cost methodology described in the NOPR. However, as the following sections discuss in more detail, DOE revised the inputs to the LCC analysis.

1. Equipment Prices

The price of a PTAC or PTHP reflects the application of distribution channel markups and the addition of sales tax to the MSP as described in the NOPR. Modifications made for the final rule include using the latest MSP data in 2007$ and incorporating changes to the material prices discussed previously, updating the wholesale markups to use 2007 data available from the HARDI 2007 Profit Report, updating State sales tax data to 2008 data from the Sales Tax Clearing House Web site, and updating State population data (used for allocating national shipments to State-level shipments) to use 2007 information from the U.S. Census Bureau.

2. Installation Costs

For the NOPR, DOE derived installation costs for PTACs and PTHPs from data provided in *RS Means CostWorks 2007* (RS Means).[12] For the final rule, DOE updated the installation costs using the *RS Means CostWorks 2008* data. Several commenters gave their views on whether higher installation costs should be assumed for PTHP equipment compared with PTAC equipment. Goodman commented that drain systems for PTHP installations as required by several of the building codes might be fairly expensive, resulting in higher installation costs for PTHP compared to PTAC equipment. Goodman pointed out that the odds of replacing a PTAC with a PTHP are low because of the additional cost to add drains during equipment replacement. (Goodman, No 8.4 at p. 116) GE commented that DOE does not need to include a significant cost in the LCC for a drainage system because several manufacturers offer low cost kits and special models that remove moisture without the use of a drainage system. (GE, No. 20 at p. 3) Since there was differing opinion with regard to whether higher installation costs would be required for PTHP equipment and since these installation costs were held constant for all efficiency levels and would not affect the LCC savings or NPV figures calculated for higher

[12] R.S. Means Company, Inc. 2007. RS Means CostWorks 2007. Kingston, Massachusetts.

efficiency PTHP or PTAC standards, DOE did not further modify the installation costs beyond what was reflected in the RS Means CostWorks data.

3. Annual Energy Use

DOE estimated the electricity consumed in kilowatt hours per year (kWh/year) by the PTAC and PTHP equipment based on the whole-building energy use characterization as described in the NOPR. 73 FR 18876. DOE also used the same energy use data and characterization developed for the NOPR analysis in the final rule. See Chapter 7 of the NOPR and FR TSDs for additional information.

4. Electricity Prices

Electricity prices are needed to convert the electric energy savings into energy cost savings. DOE updated the State-by-State average electricity price information for the commercial sector to reflect 2007 data available from EIA. DOE further adjusted these prices to reflect average electricity prices for the four types of businesses DOE identified that use PTAC and PTHP equipment. DOE identified these businesses using Commercial Buildings Energy Consumption Survey (CBECS) 2003 data,[13] as described in the NOPR. To develop the LCC distributions, DOE continued to use a probability distribution to determine not only which State received the shipment of equipment, but also which business types would purchase the equipment and what electricity price they would pay. State populations formed the basis for allocating the equipment shipment distribution to different States. DOE updated these State-by-State population data with 2007 data published by the U.S. Census. The State-average effective prices (2007$) range from approximately 5.1 cents per kWh to approximately 28.0 cents per kWh. Chapter 8 of the TSD details the development and use of State-average electricity prices by business type.

The electricity price trend provides the relative change in electricity prices for future years to 2042. DOE applied the AEO2008 reference case as the default scenario and extrapolated the trend in values from 2020 to 2030 of the forecast to establish prices for 2030 to 2042, as in the NOPR. DOE provided a sensitivity analysis of the LCC savings and PBP results to future electricity price scenarios. Because EIA did not publish its high- and low-growth forecasts in time for incorporation into this final rule, DOE developed high- and low-growth electricity forecasts corresponding to the AEO2008 forecasts. DOE calculated the ratio of the AEO2007 high- or low-growth forecasted electricity price to the AEO2007 reference case forecast for each year. DOE then applied those ratios, respectively, to the AEO2008 reference case prices.

5. Maintenance Costs

Maintenance costs are the customer's costs to keep equipment in top operating condition. For the NOPR, DOE estimated annual routine maintenance costs for PTAC and PTHP equipment at $50 per year per unit. DOE explained that this estimate was based on statements made during informational interviews with manufacturers. Because data were not available to indicate how maintenance costs vary with equipment efficiency, DOE thus determined to use this preventative maintenance costs that remain constant as equipment efficiency is increased. 73 FR 18879. For the final rule, DOE updated the maintenance costs to reflect data for packaged terminal equipment available in *RS Means Costworks 2008*.

In the NOPR, DOE specifically requested comments on its estimate for maintenance costs and whether the assumptions made would be the same under R–410A. GE commented that repair and maintenance costs (primarily cleaning) would be fixed costs and handled either in house or contracted out. GE's experience working with their customers is that maintenance costs are not a function of equipment efficiency, even though GE equipment efficiencies have increased nearly 10% in the past 5 years. (Public Meeting Transcript, No. 12 at p. 99) Goodman commented that third-party servicers or hoteliers themselves may be better sources of maintenance cost data than manufacturers. (Public Meeting Transcript, No. 12 at pp. 111–112) AHRI commented that maintenance costs will increase with heat exchanger surface area that is commensurate with higher efficiency equipment. (Public Meeting Transcript, No. 12 at pp. 97–98) Goodman expressed concerns over condenser maintenance if manufacturers use closer fin spacing or three or four row coils due to the slinger ring throwing water on the coil and dirt buildup. Goodman also pointed out that dirty condensers can degrade compressors through overheating. This compressor degradation is a long-term impact not improved by coil cleaning. (Public Meeting Transcript, No. 12 at pp. 111–112) ACEEE commented that equipment redesigns are likely to result in reduced repair costs, which would offset any additional maintenance costs. (Public Meeting Transcript, No. 12 at p. 98)

Although opinions were expressed that maintenance costs might increase as a function of efficiency level, this appears not to be the case in GE's experience. Accordingly, DOE decided to use the Means CostWorks 2008 estimate of preventive maintenance costs, which remain constant as equipment efficiency increases.

6. Repair Costs

The repair cost is the customer's cost of replacing or repairing components that have failed in the PTAC and PTHP equipment. DOE estimated annual repair costs for the final rule in the same way that it estimated annual repair costs for the NOPR. DOE estimated the annualized repair cost for baseline efficiency PTAC and PTHP equipment at $15, based on costs of extended warranty contracts for PTACs and PTHPs. After analyzing these data, DOE determined that repair costs would increase in direct proportion with increases in equipment prices. See Chapter 8 of the TSD for additional details.

In the NOPR, DOE specifically requested comment on its estimation for repair costs, as well as installation and maintenance costs. The comments DOE received addressed several areas. GE commented that it does not expect the compressor service call rate to increase for higher efficiency equipment because GE already has rotary compressors in service. (GE, No. 20 at p. 2) Carrier stated that it would expect to see slightly higher repair costs overall for R–410A refrigerant equipment because of the more hygroscopic nature of R–410A. (Carrier, No. 16 at p. 3) ECR warned that if efficiency standards are set too high, existing R–22 refrigerant equipment may be kept in place longer, which may result in increased repair costs. Although DOE recognizes that overall repair costs may increase under R–410A, commenters provided no data to refine DOE's repair cost estimate for equipment using R–410A refrigerant. Because no commenter expressed disagreement with DOE's methodology of scaling repair costs with efficiency level, DOE continued to use the same approach in the final rule. DOE recognizes that the extension of life for R–22 equipment is possible under any scenario, but has no data with which to refine its shipment or repair cost analysis. DOE believes that the impact of life extension for R–22 equipment would, if it occurs, primarily affect the energy savings estimate. However,

[13] EIA's CBECS 2003 is the most recent version of this data set.

because extension of life generally increases the period over which a purchased product can provide services regardless of efficiency level or refrigerant, DOE does not expect a significant impact on the economics of higher-efficiency PTAC and PTHP equipment to the Nation.

7. Equipment Lifetime

DOE defines equipment lifetime as the age when a PTAC or PTHP unit is retired from service. For the NOPR, DOE used a typical lifetime of 10 years after reviewing available data sources and concluding that a 10-year life is appropriate for PTAC and PTHP equipment. DOE incorporated variability in lifetime in its LCC analysis using a Weibull [14] statistical distribution with an average lifetime of 10 years and a maximum lifetime of 20 years. In response to the NOPR, DOE received no comments on the lifetime assumptions for new equipment purchases that would affect the LCC analysis. DOE, therefore, retained the same lifetime assumptions and methodologies developed for the NOPR in the final rule analysis. See Chapter 8 of the TSD for additional information.

8. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE estimated the discount rate by estimating the weighted average cost of capital (WACC) for purchasers of PTAC and PTHP equipment based on weighting the cost of both debt and equity capital used to fund investments. For the NOPR, DOE used financial information from a sample of companies, including large hotel/motel chains and health-care chains drawn from a database of U.S. companies on the *Damodaran Online* Web site. See *http://pages.stern.nyu.edu/~adamodar*. The NOPR used the data available in 2007. The final rule's analysis relies on the same data source to develop discount rates, but was updated to reflect the data available in January 2008.

DOE calculated the weighted average after-tax discount rate for PTAC and PTHP purchases, adjusted for inflation, as 5.53 percent for large hotel chains and 5.64 percent for health care institutions (nursing homes and assisted living facilities). The cost of capital for independent hoteliers and small office companies is more difficult to determine because these business types are not explicitly identified in the Damodaran data. For the final rule, DOE used the same methodology that it used to determine the discount rates for these business types in the NOPR. Specifically, DOE developed an 8.03 percent after-tax discount rate for independent hoteliers and an 8.14 percent after-tax rate for small offices. These values vary only slightly from those presented in the NOPR. Chapter 8 of the TSD provides more detail on the calculation of discount rates.

F. National Impact Analysis—National Energy Savings and Net Present Value Analysis

The National Impact Analysis (NIA) evaluates the impact of an amended energy conservation standard from a national perspective rather than from the customer perspective, which is represented by the LCC. This analysis assesses the NES and the NPV (future amounts discounted to the present) of total commercial customer costs and savings, which are expected to result from amended energy conservation standards for PTACs and PTHPs at specific efficiency levels. DOE followed the same analysis approach for the NIA as it used for the NOPR analysis, using a Microsoft Excel spreadsheet model to calculate the energy savings and the national economic costs and savings from amended energy conservation standards. Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. DOE examined sensitivities by applying different scenarios. DOE used the NES spreadsheet to perform calculations of energy savings and NPV, using the annual energy consumption and total installed cost data from the LCC analysis. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV of benefits for each TSL from 2012 through 2042. The forecasts provided annual and cumulative values for all four output parameters.

For each TSL, DOE calculated the NES and NPV as the difference between a base case forecast (without amended standards) and the standards case (with amended standards). The NES refers to cumulative energy savings from 2012 through 2042. The NPV refers to cumulative monetary savings. DOE calculated net monetary savings in each year relative to the base case as the difference between total operating cost savings and increases in total installed equipment cost. Cumulative savings are the sum of the annual NPV over the specified period. DOE accounted for operating cost savings until 2062 (*i.e.*, until all the equipment installed through 2042 is retired).

DOE built up the NES analysis from a combination of unit energy savings for each class of PTAC or PTHP equipment analyzed and estimated shipments of units in this class at each efficiency level from 2012 through 2042. Unit energy savings for each equipment class are the weighted-average values calculated in the LCC and PBP spreadsheet. These calculations involved multiple steps. First, DOE calculated the national site energy consumption (*i.e.*, the energy directly consumed by the units of equipment in operation) for PTACs or PTHPs for each year, beginning with the expected effective date of the standards (2012) for the base-case forecast and the standards case forecast. Second, DOE determined the annual site energy savings, consisting of the difference in site energy consumption between the base case and the standards case. Third, DOE converted the annual site energy savings into the annual amount of energy saved at the source of electricity generation (the source energy). DOE used a site-to-source conversion factor developed from an analysis of the marginal impacts of changes in PTAC and PTHP energy use on the energy source energy inputs in DOE's Utility Impacts analysis. Finally, DOE summed the annual source energy savings from 2012 to 2042 to calculate the total NES for that period. DOE performed these calculations for each TSL and equipment class considered in this rulemaking.

Changes in inputs to the analyses and reporting drove the modifications to the NIA analyses and results. Changes to the NES results between the NOPR and final rule were due to a reduction in the TSL levels considered for non-standard PTAC and PTHP equipment classes and a change in the mix of equipment efficiencies used in the base case and standards case equipment efficiency forecasts. Although DOE used the same economic model for predicting the distribution of equipment efficiencies in both the final rule and the NOPR, these changes in the installed equipment prices and the lower R–410A max tech efficiency levels resulted in slight shifts to the overall efficiency distributions for each equipment class. In addition, the site-to-source energy conversion factor developed for the final rule used EIA's NEMS model consistent with AEO2008. The calculated conversion factors in the final rule differed from that calculated for the NOPR, which relied on EIA's AEO2007.

To estimate NPV, DOE calculated the net impact as the difference between

[14] The Weibull distribution is a continuous probability distribution used to understand the failure and durability of equipment. It is popular because it is extremely flexible and can accurately model various types of failure processes. A two-parameter version of the Weibull was used and is described in chapter 8 of the TSD,

total operating cost savings (including electricity, repair, and maintenance cost savings) and increases in total installed costs (including MSP, sales taxes, distribution chain markups, and installation cost). DOE calculated the NPV of each TSL over the life of the equipment by determining: (1) The difference between the equipment costs under the TSL case and the base case in order to obtain the net equipment cost increase resulting from the TSL; (2) the difference between the base case operating costs and the TSL operating costs in order to obtain the net operating cost savings from the TSL; and (3) the difference between the net operating cost savings and the net equipment cost increase in order to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2008 for PTACs and PTHPs bought between 2012 and 2042, and summed the discounted values to provide the NPV of a TSL. DOE used discount rates of 7 percent and 3 percent in accordance with Office of Management and Budget (OMB) guidance to evaluate the impacts of regulations. An NPV greater than zero shows net savings (*i.e.*, the TSL would reduce customer expenditures relative to the base case in present value terms). An NPV less than zero indicates that the TSL would result in a net increase in customer expenditures in present value terms.

Changes in inputs to the analyses and reporting drove modifications to the NPV analyses and results. Changes to the NES results were due to (1) a reduction in the number of TSL levels considered for non-standard PTAC and PTHP equipment classes, (2) a change in the mix of equipment efficiencies used in the base case and standards case equipment efficiency forecasts, and (3) the use of electricity price forecasts from the AEO 2008 reference case. As with the LCC analysis, DOE analyzed high- and low-growth energy price forecasts. Because EIA had not published actual high- and low-growth forecasts in time for the final rule analysis, DOE developed high- and low-growth scenarios based on the AEO2008 reference case forecast. DOE applied the ratio of the year-by-year energy prices from the AEO2007 high- and low-growth price forecasts, respectively, to the AEO2007 reference case forecast. Chapter 10 of the TSD provides a full discussion of the NIA. Table IV.3 summarizes the inputs and key assumptions used to calculate the national energy savings and national economic impacts of all energy efficiency levels analyzed in this rulemaking.

TABLE IV.3—SUMMARY OF NES AND NPV MODEL INPUTS

Inputs	NOPR description	Changes for final rule
Shipments	Annual shipments from shipments model (Chapter 10 of the TSD).	No change.
Effective Date of Standard	September 2012	No change.
Base Case Efficiencies	Distribution of base case shipments by efficiency level	Equipment costs and economic benefits for each TSL level come from final rule LCC analysis.
Standard Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards case annual shipment-weighted market shares remain the same as in the base case and each standard level for all efficiencies above the TSL. All other shipments are at the TSL efficiency.	Equipment costs and economic benefits for each TSL level come from final rule LCC analysis. Only three TSL levels considered for non-standard PTAC and PTHP equipment.
Annual Energy Use per Unit	Annual national weighted-average values are a function of efficiency level.	No change.
Total Installed Cost per Unit	Annual weighted-average values are a function of efficiency level.	Updated with values from final rule LCC analysis.
Repair Cost per Unit	Annual weighted-average values increase with manufacturer's cost level.	Updated with values from final rule LCC analysis.
Maintenance Cost per Unit	Annual weighted-average value equals $50 (Chapter 8 of the TSD).	Updated with values from final rule LCC analysis.
Escalation of Electricity Prices.	2007 EIA AEO forecasts (to 2030) and extrapolation beyond 2030.	2008 EIA AEO forecasts (to 2030) and extrapolation for beyond 2030.
Electricity Site-to-Source Conversion Factor.	Conversion factor varies yearly and is generated by EIA's NEMS* model for AEO2007. Includes the impact of electric generation, transmission, and distribution losses.	Developed conversion factor using EIA's NEMS model for AEO 2008.
Discount Rate	3% and 7% real	No change.
Present Year	Future costs are discounted to year 2008	No change.

*Chapter 14 on the utility impact analysis provides more detail on NEMS model.

1. Shipments Analysis

DOE developed shipments projections under a base case and each of the standards cases using the identical shipments model used in the NOPR analysis. The NOPR and Chapter 10 of the TSD describe this model in more detail.

The NES spreadsheet model contains a provision for a change in projected shipments in response to efficiency level increases, but DOE has no information with which to calibrate such a relationship. For the NOPR analysis, DOE assumed that the shipments do not change in response to the changing TSLs. ECR and Cold Point commented that if DOE sets a high or unrealistic efficiency level for non-standard PTAC or PTHP equipment, customers might choose to extend the life of existing equipment that uses R–22 refrigerant. (Public Meeting Transcript (ECR), No. 12 at pp. 100–101, Cold Point, No. 18 at p. 2) However, commenters provided no data to suggest specific changes that DOE could make to its shipments analysis to account for this possible impact. For the final rule analysis, DOE presumed that projected industry shipments by product class do not change in response to changing TSLs. See discussion of equipment lifetime in section IV.E.7.

GE, ECR, and Carrier commented that it was possible that customers could switch to a less efficient class of HVAC equipment than a packaged terminal unit, such as a through-the-wall air

conditioner or a window air conditioner, which does not have a heat pump option for providing space heat. Carrier elaborated that this kind of equipment switch would occur mostly in small, independent, motel markets. (Public Meeting Transcript (GE), No. 12 at p. 141; Public Meeting Transcript (ECR), No. 12 at p. 141–141; Public Meeting Transcript (Carrier), No. 12 at p. 143)

Several interested parties commented that DOE's proposed standard level in the NOPR, TSL 4, had higher cooling efficiency requirements for PTHP equipment compared with PTAC equipment of the same capacity. This difference would mean higher proportional costs for PTHP equipment under the new energy conservation standard compared with PTAC equipment, and is likely to result in some current or future PTHP customers choosing to purchase PTAC equipment. If this occurs, there would be a decrease in overall equipment efficiency due to the much lower heating efficiency of PTAC compared with PTHP equipment. Several manufacturers expressed concern that people would be forced by cost or lack of products at the proposed standard levels to shift from PTHP to PTAC—forcing people into a less efficient product and negating much of the energy savings from the rule. (Public Meeting Transcript (ECR), No. 12 at pp. 141–142; ECR, No. 15 at p. 3; Ice Air, No. 25 at pp. 3–4; Public Meeting Transcript (Goodman), No. 12 at p. 142) AHRI and Carrier both agreed that higher efficiency levels for PTHPs will cause a shift to less efficient PTACs. (AHRI, No. 23 at p. 8; Carrier, No. 16 at p. 5)

In contrast, GE stated that the probability of users shifting to other product classes would be remote. GE pointed out that the case for a heat pump is compelling when the cost differential is $50. In almost all cases, the payback for choosing a heat pump is less than 1 year. In most cases, GE said, its customer base is composed of astute business people who are concerned about operating costs and efficiencies. (Public Meeting Transcript, No. 12 at pp. 145–146) AHRI questioned GE's assertion, given that the current market is almost evenly split between PTAC and PTHP equipment. (Public Meeting Transcript, No. 12 at p. 144)

To address concerns about equipment switching, DOE performed a sensitivity analysis on the possible impact on energy savings due to customers switching from PTACs to PTHPs for a case where a combined TSL resulted in a higher cooling efficiency (EER) might be set for PTHPs compared to PTACs of the same capacity. This sensitivity analysis examined what fraction of the future projected PTHP market would need to switch from PTHPs to PTACs with electric resistance heat to offset the energy savings from increased efficiency requirements for PTHPs relative to PTACs at TSLs 2, 4, and A. It also estimated the change in payback period for purchasers of PTHP versus PTAC equipment at the TSLs. DOE concluded that based on this analysis the increase in PTHP cost and the resulting change in PBP for these TSLs were both small and that it was unlikely that the savings from higher PTHP standards under these TSLs would be offset by customers switching to PTAC equipment. Section V.B. discusses the results of this sensitivity analysis.

2. Base Case and Standards Case Forecasted Distribution of Efficiencies

The annual energy consumption of a PTAC or PTHP unit relates directly to the efficiency of the unit. For the final rule, DOE used the same methodology that was used in the NOPR analysis to develop base case and standards case efficiency distributions for shipments. DOE developed shipment-weighted average equipment efficiency forecasts that enabled a determination of the shipment-weighted annual energy consumption values for the base case and each TSL analyzed by equipment class. DOE developed shipment estimates by converting the 2005 PTAC and PTHP equipment shipments by equipment class into market shares by equipment class. DOE then adapted a cost-based method used in the NEMS to estimate market shares for each equipment class by TSL. DOE used those market shares and projections of shipments by equipment class to determine future equipment efficiency forecasts both for a base case scenario and standards case scenarios. The difference in equipment efficiency between the base case and standards cases was the basis for determining the reduction in per-unit annual energy consumption that could result from amended energy conservation standards. Although the methodology DOE used was identical to that in the NOPR, differences in equipment price and annual energy consumption established in the LCC analysis resulted in slight shifts in the estimated shipments by efficiency level.

For each standards case, DOE assumed that shipments at efficiencies below the projected minimum standard levels were most likely to roll up to those efficiency levels in response to an increase in energy conservation standards. The market shares for equipment at higher efficiency levels were assumed not to be affected as the market already has a choice of that equipment. DOE, thus, assumed that the new standard would not affect the relative attractiveness of equipment with efficiencies higher than the standard. For further discussion, see Chapter 11 of the TSD.

G. Manufacturer Impact Analysis

In determining whether a standard for a covered product is economically justified, the Secretary of Energy is required to consider ''the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.'' (42 U.S.C. 6295(o)(2)(B)(i)(I)) EPCA also requires for an assessment of the impact of any lessening of competition as determined by the Attorney General. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE performed the MIA to estimate the financial impact of energy conservation standards on the standard size and non-standard size PTAC and PTHP industries, and to assess the impact of such standards on employment and manufacturing capacity. DOE published the results in the NOPR. 73 FR 18883–87, 18893–99. For this final rule, while DOE did not introduce changes to the methodology described in the NOPR, it updated the R–410A-shipment forecast distribution of shipments based on the updated NIA results. (See TSD Chapter 13.) In response to DOE's NOPR presentation, interested parties provided comments on the cumulative regulatory burden, small business impacts, and employment.

1. GRIM Input Updates

The GRIM inputs consists of information regarding the standard size and non-standard size PTAC and PTHP industries' cost structure, shipments, and revenues. This includes information from many of the analyses described above, such as manufacturing costs and prices from the engineering analysis and shipments forecasts. In response to the presentation of the MIA analysis in the NOPR, DOE revised several key inputs to the GRIM based on more recent sources of data for both standard and non-standard size PTAC and PTHP industries.

a. Manufacturing Production Costs

The GRIM uses cost-efficiency curves derived in the engineering analysis to calculate the MPCs for each equipment class at each TSL. By multiplying different sets of markups with the MPCs, DOE derives the manufacturing selling prices (MSP) used to calculate industry revenues. For this final rule,

DOE used the MPCs from the final rule engineering analysis as described in Chapter 5 of the TSD.

b. Shipments and Distributions of Efficiencies in the Base Case

The GRIM estimates manufacturer revenues based on total-unit-shipment forecasts and the distribution of these values by EER. Changes in the efficiency mix at each standard level are a key driver of manufacturer finances. For the final rule analysis, DOE used only the NES shipments forecasts and the distribution of efficiencies in the base case for both standard size and non-standard size PTACs and PTHPs from 2007 to 2042. DOE continued to allocate the closest representative cooling capacity, within the appropriate equipment class, to any shipments forecasted by the NES of equipment that was not within one of the representative cooling capacities. For example, the total PTAC or PTHP shipments with a cooling capacity less than 10,000 Btu/h for standard size equipment are included with the 9,000 Btu/h representative cooling capacity. (See Chapter 13 of the final rule TSD.)

c. R–410A Base Case and Amended Energy Conservation Standards Markup Scenarios

The PTAC and PTHP manufacturer impact analysis is explicitly structured to account for the cumulative burden of sequential refrigerant and amended energy conservation standards. In the NOPR, DOE described the two markup scenarios used to calculate the base case INPV after implementation of the R–22 refrigerant phaseout, and the standards case INPV at each TSL. (See Chapter 13 of the NOPR TSD.) For the final rule, DOE continued to analyze two distinct R–410A base case and amended energy conservation standards markup scenarios: (1) The flat markup scenario, and (2) the partial cost recovery markup scenario. Under the flat markup scenario, DOE applied a single uniform ''gross margin percentage'' markup across all TSLs that DOE believes represents the current markup for manufacturers in the standard and non-standard size PTAC and PTHP industries. The ''partial cost recovery'' scenario implicitly assumes that the industries can pass-through only part of their regulatory-driven increases in production costs to consumers in the form of higher prices. As presented in the NOPR, these markup scenarios characterize the markup conditions described by manufacturers, and reflect the range of market responses manufacturers expect as a result of the R–22 phaseout and the amended energy conservation standards. See Chapter 13 of the TSD for additional details of the markup scenarios.

d. Capital and Equipment Conversion Expenses

Energy conservation standards typically cause manufacturers to incur one-time conversion costs to bring their production facilities and equipment designs into compliance with the amended standards. For the purpose of the MIA, DOE classified these one-time conversion costs into two major groups: equipment conversion and capital conversion costs. Equipment conversion expenses are one-time investments in research, development, testing, and marketing that are focused on making equipment designs comply with the new energy conservation standard. Capital conversion expenditures are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new equipment designs can be fabricated and assembled.

For this final rule, DOE used the same capital expenses as presented in the NOPR calculated in 2007$ for both standard and non-standard size PTAC and PTHP industries. For equipment conversion expenses for the standard size PTAC and PTHP industry, DOE also used the same product expenses as presented in the NOPR calculated in 2007$. For equipment conversion expenses for the non-standard size PTAC and PTHP industry, DOE revised figures based on comments from interested parties on the NOPR. For more information on DOE's revision to the equipment conversion expenses for the non-standard size PTAC and PTHP industry, see section V.C. and Chapter 13 of the TSD.

2. Cumulative Regulatory Burden

As discussed in the NOPR, one aspect of manufacturer burden is the cumulative impact of multiple DOE standards and other regulatory actions that affect the manufacture of the same covered equipment. All PTAC and PTHP manufacturers believe that the EPA-mandated refrigerant phaseout will be the largest external burden on PTAC and PTHP manufacturers. DOE addressed the cumulative regulatory burden affecting manufacturers of PTACs and PTHPs as a result of the refrigerant phaseout by first examining impacts on INPV arising from converting R–22 to R–410A equipment production. DOE then examined the possible impacts of amended energy conservation standards on the R–410A base case. Thus, DOE examined the cumulative impacts of both R–410A conversion and compliance with the proposed energy conservation standards. (See Chapter 13 of the TSD.) 73 FR 18897–98.

In response to DOE's NOPR, ECR stated that manufacturers are forced to consider both the refrigerant phaseout and energy conservation standard levels due to the timing of the regulations. According to ECR, it is difficult to work on designs using R–410A knowing that the 2012 efficiency levels are not final and the efficiency levels proposed in the NOPR may change. (Public Meeting Transcript, No. 12 at pp. 63–64)

Similarly, Ice Air stated its concern about the cumulative regulatory burden placed on manufacturers by the refrigerant phaseout and the amended energy conservation standards. Ice Air warned that the burdens to comply with both of these regulatory actions could cause manufacturers of non-standard size equipment to go out of business and could also severely affect the standard size industry. (Ice Air, No. 25 at p. 2)

To assess the impacts on INPV due to both refrigerant phaseout and energy conservation standards, DOE first examined the changes in industry cash flows from 2007 to 2010 using only equipment with R–22 refrigerant (*i.e.*, before the refrigerant phaseout). DOE then examined the changes in industry cash flows from 2010 through 2042 using only equipment with R–410A refrigerant (*i.e.*, after the refrigerant phaseout). The sum of the cash flows discounted to the current year equates to the INPV used to quantify the impacts on the industries. DOE included equipment prices using both R–22 and R–410A refrigerant estimated in the engineering analysis and equipment conversion and capital conversion expenses related to both energy conservation standards and refrigerant phaseout in its manufacturer impact analysis. Investment estimates used in the analysis can be found in the NOPR, 73 FR 18893–96, and in Chapter 13 of the TSD. Although investments needed to meet the proposed energy conservation standards and refrigerant phaseout requirements could vary among manufacturers, the values DOE used in its analysis are an aggregate of information manufacturers provided. Given these variations in investment within the industry, DOE believes that the MIA captures the potential range of costs, investments, and impacts on manufacturers due to both energy conservation standards and the refrigerant phaseout.

AHRI commented that DOE did not account for the costs to phase out HCFCs from other air-conditioning equipment or to comply with other

energy conservation standards produced by PTAC and PTHP manufacturers. (AHRI, No. 23 at p. 5)

For the NOPR, DOE examined other Federal regulations that could affect manufacturers of standard and non-standard size PTACs and PTHPs. Chapter 13 of the TSD presents DOE's findings. 73 FR 18897–98. These findings generally indicated that the refrigerant phaseout is the most significant other Federal regulation impending in the industry at this time. For this final rule, DOE also identified the other DOE regulations standard size and non-standard size PTAC and PTHP manufacturers are facing for other equipment they manufacture within three prior and three years after the effective date of the amended energy conservation standards for PTACs and PTHPs. DOE identified the costs of additional regulations when these estimates were available from other DOE rulemakings. Chapter 13 of the TSD presents additional information regarding the cumulative regulatory burden analysis.

3. Employment Impacts

In response to DOE's presentation of the direct employment impacts characterized in the MIA and presented in the NOPR TSD, EarthJustice commented that DOE's projection of employment impacts of standards on the regulated industry demonstrates an economic benefit in the form of increased employment on a global scale. Specifically, EarthJustice comments that the benefits from an increase in employment would be principally to other countries and that DOE does not take this into consideration in its analysis. (EarthJustice, No. 22 at p. 5)

DOE believes EarthJustice's assertion that DOE only considered the direct employment impacts on international manufacturers is incorrect. DOE calculated the total labor expenditures for the industry using the unit labor costs from the engineering analysis and the total industry shipments from the NES. DOE translated the total labor expenditures for the industry to the total number of jobs using the average labor rate for the industry and the annual worker hours. Finally, DOE multiplied the total number of jobs by the domestic market share to derive the domestic number of jobs for the base case and each TSL. The direct employment results characterized by the MIA represent U.S. production workers are impacted by this rulemaking in the standard and non-standard size PTAC and PTHP manufacturing industries. See section V.C.2 for the results of the direct employment impact analysis. Accordingly, DOE has considered all employment impacts in weighing the benefits and the burdens, including direct (as calculated by the MIA) and indirect (as calculated by the employment impact analysis).

In response to the increase in direct employment characterized by the MIA, ECR, a domestic manufacturer of non-standard size equipment, and McQuay, a domestic manufacturer of both standard and non-standard size equipment, commented that the adoption of the proposed amended energy conservation standards would have adverse impacts on employment and their businesses. Specifically, ECR commented that adopting TSL 4 from the NOPR might have an adverse impact on employment and customers in New York, where a large volume of equipment is produced and shipped. (ECR, No. 15 at p. 3; see also Public Meeting Transcript, No. 12 at p. 184) Similarly, McQuay stated that unlike the standard size equipment that is built overseas, the non-standard size equipment is unique because it is developed, manufactured, and supported by domestic facilities mainly located in the state of New York. Any impacts on its non-standard size equipment business would have an economic impact on McQuay. (Public Meeting Transcript, No. 12 at p. 184)

DOE calculated the potential impacts of amended energy conservation standards on domestic production employment for the non-standard industry by bounding the range of potential impacts. For the upper bound, the direct employment impact analysis conducted as part of the MIA estimates the number of U.S. production workers who are impacted by this rulemaking in the non-standard size PTAC and PTHP manufacturing industries, assuming that shipment levels and product availability remain at current levels. In this best case scenario, where shipments do not decrease and higher efficiency products require more labor, the direct employment impact analysis shows a net increase in the number of domestic jobs for the non-standard size industries. It is reasonable to assume that shipments and product availability will continue because consumers will continue to demand non-standard PTACs and PTHPs for their replacement needs. For these customers, modifications to their buildings to accommodate standard size PTACs and PTHPs is a large cost they will try to prevent. However, at higher standard levels, the product development costs are prohibitive for the small domestic manufacturers that produce PTACs and PTHPs. These domestic manufacturers may exit the industry rather than invest in new designs. This would result in a loss of domestic employment at these firms. The unmet demand could be satisfied by new domestic manufacturers or foreign manufacturers.

To calculate the lower bound of the range of potential impacts, DOE developed a scenario where either shipments drop or manufacturers respond to higher labor requirements by shifting production to lower-labor-cost countries. For the non-standard industry, DOE believes this scenario is a possibility because DOE noticed that the non-standard market currently offers over approximately 40 different equipment platforms, many of which are built in very low volumes. As a result, the non-standard market will incur a much higher impact due to fixed costs on a per unit basis. Since the non-standard PTAC and PTHP industry is composed chiefly of small businesses, any energy conservation standard for non-standard PTACs and PTHPs will impact mostly small businesses, which might choose to exit this industry rather than invest the necessary resources to convert existing equipment lines. Alternatively, manufacturers could choose to move their manufacturing facilities overseas as a method of reducing costs. Consequently, DOE assumed that the greater labor requirements displace all U.S. production workers in the non-standard industry and used this condition as a lower bound to the potential impacts of standards on domestic production employment.

H. Employment Impact Analysis

When developing a standard for adoption, DOE considers its employment impact. Direct employment impacts are any changes in the number of employees for PTAC and PTHP manufacturers, their suppliers, and related service firms. Indirect impacts are changes in employment in the larger economy that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient PTAC and PTHP equipment. The MIA in this rulemaking addresses the employment impacts on manufacturers of PTACs and PTHPs (*i.e.*, the direct employment impacts) (Chapter 13 of the TSD). This section describes other, primarily indirect, employment impacts.

Indirect employment impacts from PTAC and PTHP standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, as a consequence of (1) reduced spending by end users on energy (electricity,

gas—including liquefied petroleum gas—and oil); (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new PTACs and PTHPs; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor.

DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET). Developed by DOE's Building Technologies Program, the ImSET model estimates changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in the various sectors of the economy. DOE estimated changes in expenditures using the NES spreadsheet. ImSET then estimated the net national indirect employment impacts of potential PTAC and PTHP equipment efficiency standards on employment by sector. DOE received no comments on the employment analysis during the NOPR, so it made no changes to the analysis and methodology in the final rule.

The ImSET input/output model suggests that the amended PTAC and PTHP efficiency standards could increase the net demand for labor in the economy as the net monetary savings from standards are redirected to other forms of economic activity. The gains would most likely be small relative to total national employment, primarily due to the small net monetary savings from amended PTAC and PTHP energy conservation standards available for transfer to other sectors, relative to the economy as a whole. Chapter 15 of the TSD provides more details on the employment impact analysis.

I. Utility Impact Analysis

The utility impact analysis estimates the effects of reduced energy consumption due to improved equipment efficiency on the utility industry. This utility analysis consists of a comparison between forecast results for a case comparable to the AEO2008 Reference Case and forecasts for policy cases incorporating each of the PTAC and PTHP TSLs.

DOE analyzed the effects of amended standards on electric utility industry generation capacity and fuel consumption using a variant of the EIA's NEMS. NEMS, which is available in the public domain, is a large, multisectoral, partial-equilibrium model of the U.S. energy sector. EIA uses NEMS to produce its AEO, a widely recognized baseline energy forecast for the United States. DOE used a variant of NEMS, referred to as NEMS–BT, to clarify that NEMS has been modified to take into account the energy savings from standards for PTAC and PTHP at different TSL levels.

DOE conducted the utility analysis as policy deviations from the AEO2008, applying the same basic set of assumptions. The NEMS–BT is run similarly to the AEO2008 NEMS, except that PTAC and PTHP energy usage is reduced by the amount of energy (by fuel type) saved due to the TSLs. DOE obtained the inputs of national energy savings from the NES spreadsheet model. Using these inputs, the utility analysis reported the changes in installed capacity and generation (by fuel type) that result for each TSL, as well as changes in end-use electricity sales. Aside from the use of the AEO2008, DOE made no other changes to the methodology used for the utility impact analysis from the NOPR. Chapter 14 of the TSD provides details of the utility analysis methods and results.

J. Environmental Analysis

DOE has prepared a draft environmental assessment (EA) pursuant to the National Environmental Policy Act and the requirements under 42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a), to determine the environmental impacts of the amended standards. Specifically, DOE estimated the reduction in total emissions of carbon dioxide (CO_2) using the NEMS–BT computer model. DOE calculated a range of estimates for reduction in NO_X emissions and Hg emissions using current power sector emission rates. However, the Environmental Assessment (see Chapter 16 of the FR TSD accompanying this notice) does not include the estimated reduction in power sector impacts of sulfur dioxide (SO_2), because DOE has determined that due to the presence of national caps on SO_2 emissions as addressed below, any such reduction resulting from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States.

The NEMS–BT is run similarly to the AEO2008 NEMS, except the energy use is reduced by the amount of energy saved due to the TSLs. DOE obtained the inputs of national energy savings from the NIA spreadsheet model. For the Environmental Assessment, the output is the forecasted physical emissions. The net benefit of the standard is the difference between emissions estimated by NEMS–BT and the AEO2008 Reference Case. The NEMS–BT tracks CO_2 emissions using a detailed module that provides results with a broad coverage of all sectors and inclusion of interactive effects.

The Clean Air Act Amendments of 1990 set an emissions cap on SO_2 all power generation. The attainment of this target, however, is flexible among generators and is enforced through the use of emissions allowances and tradable permits. Because SO_2 emissions allowances have value, they will almost certainly be used by generators, although not necessarily immediately or in the same year with and without a standard in place. In other words, with or without a standard, total cumulative SO_2 emissions will always be at or near the ceiling, while there may be some timing differences between year-by-year forecasts. Thus, it is unlikely that there will be an SO_2 environmental benefit from electricity savings as long as there is enforcement of the emissions ceilings.

Although there may not be an actual reduction in SO_2 emissions from electricity savings, there still may be an economic benefit from reduced demand for SO_2 emission allowances. Electricity savings decrease the generation of SO_2 emissions from power production, which can decrease the need to purchase or generate SO_2 emissions allowance credits, and decrease the costs of complying with regulatory caps on emissions.

Like SO_2, future emissions of NO_X and Hg would have been subject to emissions caps under the Clean Air Interstate Act (CAIR) and Clean Air Mercury Rule (CAMR). As discussed later in section V.C.6, these rules have been vacated by a Federal court. But the NEMS–BT model used for today's final rule assumed that both NO_X and Hg emissions would be subject to CAIR and CAMR emissions caps. In the case of NO_X emissions, CAIR would have permanently capped emissions in 28 eastern States and the District of Columbia. Because the NEMS–BT modeling assumed NO_X emissions would be subject to CAIR, DOE established a range of NO_X reductions based on the use of a NO_X low and high emissions rates (in metric kilotons (kt) of NO_X emitted per terawatt-hours (TWh) of electricity generated) derived from the AEO2008. To estimate the reduction in NO_X emissions, DOE multiplied these emission rates by the reduction in electricity generation due to the standards considered. For mercury, because the emissions caps specified by CAMR would have applied to the entire country, DOE was unable to use NEMS–BT model to estimate the physical quantity changes in mercury emissions due to energy conservation

standards. To estimate mercury emission reductions due to standards, DOE used an Hg emission rate (in metric tons of Hg per energy produced) based on AEO2008. Because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the metric tons of mercury emitted per TWh of coal-generated electricity. To estimate the reduction in mercury emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity associated with standards considered.

In comments on the NOPR, NRDC asked if the monetization of carbon should have been included in the LCC and the NPV analyses and questioned DOE's selection of the $0 to $14 range for carbon prices in the NOPR analysis. The group recommended that DOE use new cost figures for monetizing carbon from the new EIA report. (Public Meeting Transcript No. 12 at pp. 110–111, 192–194) AHRI by contrast commented that DOE is acting appropriately by not speculating on carbon emission pricing. (AHRI, No. 23 at p. 9) EarthJustice stated that EPCA mandates that DOE consider the need for national energy conservation and determine whether a standard is ''economically justified'' require DOE to factor economic benefits that are shared by the nation as a whole, not just those benefits that accrue to PTAC and PTHP customers. EarthJustice commented that in the case of SO_2 emissions and NO_X emissions in states covered by the Clean Air Interstate Rule (CAIR)[15], DOE should monetize the values of total change in the value of the allowance credits for these emissions and incorporate this amount into the NPV analysis. In the case of CO_2, NO_X in non-CAIR states, and Hg, EarthJustice stated that DOE must consider the value of the environmental benefit resulting from reduced emissions of these pollutants in the NPV analysis. Finally, EarthJustice questioned the range of valuations for CO_2 emissions used in the NOPR, pointing out that the high end valuation used by DOE was consistent with the average value from the IPCC source cited by DOE. (EarthJustice, No. 22 at pp. 4–5)

DOE has made several additions to its monetization of environmental emissions reductions in today's rule, which are discussed in Section V.C.6, but has chosen to continue to report these benefits separately from the net benefits of energy savings. Nothing in EPCA, nor in the National Environmental Policy Act, requires that the economic value of emissions reduction be incorporated in the net present value analysis of the value of energy savings. Unlike energy savings, the economic value of emissions reduction is not priced in the marketplace.

SO_2 emissions, which, as discussed previously are not impacted by this rulemaking, have markets for emissions allowances. The market clearing price of SO_2 emissions is roughly the marginal cost of meeting the regulatory cap, not the marginal value of the cap itself. Further, because SO_2 (for the nation) is regulated by a cap and trade system, the effect of the need to meet these caps is already included in the price of energy or energy savings. With a cap on SO_2, the value of energy savings already includes the value of SO_2 control for those consumers experiencing energy savings. The economic cost savings associated with SO_2 emissions caps is approximately equal to the change in the price of traded allowances resulting from energy savings multiplied by the number of allowances that would be issued each year. That calculation is uncertain because the energy savings for PTAC and PTHP equipment are so small relative to the entire electricity generation market that the resulting emissions savings would have almost no impact on price formation in the allowances market and likely would be outweighed by uncertainties in the marginal costs of compliance with the SO_2 emissions caps.

For those emissions currently not priced (CO_2, Hg, and NO_X), only a range of estimated economic values based on environmental damage studies of varying quality and applicability is available. Consequently, DOE is reporting and weighing these values separately and is not including them in the NPV analysis.

K. Other Comments

1. Burdens on Small, Non-Standard Size PTAC and PTHP Manufacturers

In the MIA conducted for the NOPR, DOE determined the impacts on the non-standard size PTAC and PTHP industry separately from the standard size PTAC and PTHP industry due to their differences in equipment classes, shipment volumes, and equipment prices. DOE took into consideration the size, location, and specialization of the non-standard size PTAC and PTHP industry when calculating production costs (see Chapter 5 of the NOPR TSD) and capital and equipment conversion expenses (see Chapter 13 of the NOPR TSD) required to meet the proposed amended energy conservation standards. Due to the limited number of publicly owned manufacturers of non-standard equipment (i.e., the majority of non-standard equipment manufacturers are privately held companies), DOE relied on information provided by manufacturers during interviews for the NOPR MIA. DOE estimated the industry research and development (R&D) expenses needed to achieve each trial standard level. Details of the R&D expenses by equipment class are presented in Chapter 13 of the NOPR TSD. The TSD generally indicates that these equipment conversion expenses would be over 20 million dollars for the non-standard size industry to transform their equipment lines at TSL 1 and higher TSLs. In addition, the NOPR interviews suggested the kinds of impacts imposed by amended energy conservation standards on small businesses would not largely differ from impacts on larger companies within the non-standard size equipment industry.

In response to the presentation of the potential impacts on non-standard size manufacturers that DOE described in the NOPR, AHRI, Ice Air, and ECR each provided comments and public statements regarding this issue. AHRI commented that the relative impacts on non-standard size equipment manufacturers are greater than the impacts on standard size equipment manufacturers. (AHRI, No. 23 at p. 5) Ice Air commented that the non-standard size PTAC and PTHP industry is comprised of five or six smaller businesses (mainly located in New York State) that cannot afford to match the R&D spending of large, multi-national companies making standard PTACs and PTHPs at much higher volumes. Ice Air, being one of the smallest manufacturers, stated that smaller companies would be adversely impacted, with some companies forced to go out of business. Similarly, Ice Air stated that the proposed standards could potentially eliminate the ''non-standard'' segment of the industry, including a significant portion of its own product offerings of non-standard size PTACs and PTHPs. Ice Air also stated that the possible elimination of non-standard size equipment manufacturers may lead to a lessening of the competition and limit consumers' choices to the offerings of the larger size equipment manufacturers. (Ice Air, No. 25 at p. 2–4) ECR commented that small manufacturers of non-standard size PTAC and PTHP equipment would be negatively impacted at TSL 4 and that this proposed standard could impact the availability of products for its customers, particularly in concentrated

[15] See *http://www.epa.gov/cleanairinterstaterule/*.

areas like New York City that have large shipments of non-standard equipment. (ECR, No. 15 at p. 3)

In response to comments from interested parties, DOE further reviewed the non-standard size PTAC and PTHP industry, the data gathered during manufacturing interviews, and manufacturer literature to determine if the amended energy conservation standards would disproportionately harm the small, non-standard manufacturers.

a. Non-Standard PTAC and PTHP Industry Characteristics

The non-standard PTAC and PTHP equipment industry is characterized by a wide scope of products being manufactured at low production rates. Most non-standard units are built-to-order and are commonly customized by the manufacturer to accommodate specific building requirements. DOE review of the non-standard PTAC and PTHP market suggests that the non-standard PTAC and PTHP industry supports nearly one hundred different legacy models that were formerly made under over 30 different brand names.

The six remaining manufacturers of non-standard PTACs and PTHPs manufacture approximately 40 different replacement model platforms (as determined by sleeve size and other equipment design requirements to allow them to be drop-in replacements) and 100 models between them in total. Most non-standard units are built-to-order and are commonly customized by the manufacturer to accommodate specific building requirements. The number of equipment families offered by a particular company ranges from seven to 40 units, though customization subsequently leads to thousands of stock-keeping-units (SKUs).

The wide range of non-standard sleeve sizes is the legacy of the early PTAC and PTHP industry when over 30 competitors made these units to suit the specific needs and different wall sleeve dimensions. Industry consolidation has reduced the number of competitors to six, though the scope of non-standard equipment for sale has not lessened significantly. The number of equipment platforms offered by any particular non-standard PTAC and PTHP manufacturer ranges from seven to 40 units, though multiple capacities per equipment platform and any customization options subsequently generates thousands of SKUs.

b. Non-Standard PTAC and PTHP Market Review

DOE conducted a market review and created a list of every manufacturer that produces standard and non-standard size PTACs and PTHPs for sale in the United States using manufacturer catalogs. During interviews and at the public meeting, DOE asked interested parties and industry representatives if they were aware of any other non-standard manufacturers. DOE reviewed publicly available data such as Dun and Bradstreet reports and contacted manufacturers, where needed, to determine whether they meet the SBA's definition of a small business in the PTAC and PTHP industry. Table IV.4 lists the number of all manufacturers that supply PTACs and PTHPs in standard and/or non-standard sizes, as well as the number of small businesses in each category.

TABLE IV.4—PTAC AND PTHP MANUFACTURER CHARACTERISTICS

Market served	Total number of manufacturers in each market segment	Total number of small businesses in each market segment
Standard	9	1
Non-Standard	2	2
Both Standard and Non-Standard	4	3

As Table IV.4 illustrates, there is a greater proportion of small businesses serving the non-standard market than the standard market. The standard market is characterized by high unit volumes and a significant degree of commoditization. The non-standard market offers significantly more sleeve sizes and/or equipment platforms to choose from, most of which are made to order for specific customers. The discrepancy between unit shipments and the number of platforms requiring significant product development to meet upcoming efficiency standards is the main reason that the non-standard PTAC and PTHP industry is expected to experience a greater relative impact for any given efficiency level than the standard PTAC and PTHP industry.

DOE found that most small businesses in the PTAC and PTHP industries focus primarily on manufacturing customized and/or non-standard equipment. For example, standard size units offered by manufacturers of both kinds of equipment feature customization features such as hydronic coil heating that differentiate them from common standard PTAC and PTHPs made by higher-volume competitors. According to interviewees, the higher value that customers associate with customized and/or non-standard equipment allows them to charge higher prices, which in turn makes their (higher cost) low-volume operations viable.

The much lower volumes and the greater number of equipment platforms distinguishes the standard from the non-standard PTAC and PTHP market. Whereas standard PTAC and PTHP manufacturers only have to modify one equipment platform to meet regulatory standards, non-standard manufacturers may have to update as many as 40 different equipment platforms in their portfolio. Many equipment development costs (such as testing, certification, etc.) are somewhat fixed, making manufacturing scale an important consideration in determining whether the equipment development investments are economically justified. Similarly, any capital expenditures, such as upgrading manufacturing and fabrication lines can be spread across much higher unit volumes by high-volume manufacturers. Due to the concentration of small businesses in the non-standard PTAC and PTHP industry, that particular industry segment is more vulnerable to impacts from amended energy conservation standards. For further illustration of the economic issues, please refer to the GRIM analysis in Chapter 13 of the final rule TSD.

c. Impacts on Small Businesses in the Non-Standard Size PTAC and PTHP Industry

The phaseout of R–22 refrigerant use in 2010 adds a two-fold fixed-cost burden on all manufacturers: (1) Equipment, manufacturing lines, and fabrication centers have to be converted to R–410A refrigerant use; and (2) all equipment platforms will have to undergo equipment development, testing, and certification. Achieving even baseline ASHRAE Standard 90.1–

1999 efficiency levels for all extant products is likely to be beyond the reach of some manufacturers since they lack the scale to maintain engineering departments with the time, equipment, and budget to address multiple equipment platform conversions.

DOE reviewed published efficiency ratings for non-standard PTACs and PTHPs to estimate the percentage of the units on the market that would require extensive redesign to achieve the baseline standard level once manufacturers switch from R–22 to alternate refrigerants. Table IV.5 illustrates the various nominal EERs that non-standard PTACs and PTHPs have to achieve and what percentage of the current models are projected to achieve that level despite efficiency losses due to a R–410A conversion. This table also includes the equipment conversion costs for standard PTAC and PTHP units made by manufacturers that build primarily non-standard equipment because these units share more characteristics with non-standard equipment (such as very low production volumes, extensive customization, etc.) than with the mass-market standard PTACs and PTHPs manufactured by high-volume manufacturers.

TABLE IV.5—CUMULATIVE EQUIPMENT DEVELOPMENT COST ESTIMATES FOR THE NON-STANDARD SIZE PTAC AND PTHP INDUSTRY

Equipment class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Minimum EER for Non-Standard PTACs	8.6	9.4	9.4	9.7	9.4	10.0
Minimum EER for Non-Standard PTHPs	8.5	9.4	9.7	9.7	10.0	10.0
Percentage of Equipment Families to At or Above TSL Efficiency Levels	73%	25%	23%	23%	13%	13%
Number of Equipment Families Requiring Significant Equipment Development to Meet Standards	29	82	84	84	95	95
Aggregated Industry Burden*	7.25	20.50	21.00	21.00	23.75	23.75

*Millions of dollars.

As noted in Table IV.5, DOE identified six manufacturers of non-standard PTACs and PTHPs. DOE grouped equipment offered by manufacturers into platforms, reflecting how some equipment chassis' are sold with minimal modifications under different product names. Altogether, these six non-standard manufacturers offer over 100 different PTAC and PTHP equipment model families for sale, which represent approximately 40 different equipment platforms. In determining whether equipment platforms would be likely to require significant equipment development, DOE's estimates accounted for published EERs for equipment platforms, equipment capacity, and anticipated degradation factors as a result of adopting R–410A refrigerants. DOE took published EER ratings and degraded them according to factors from the engineering analysis. If one or more capacities within an equipment platform fell below the EER levels prescribed by a TSL (either for PTACs or PTHPs), then the equipment platform was marked for redesign. Accordingly, non-standard platforms that currently claim very high EERs are not expected to require extensive redesign except at very high TSLs.

During interviews with manufacturers, none of the non-standard PTAC and PTHP manufacturers were able to give estimates for their total equipment conversion costs by efficiency level. As a result, DOE estimated the investment requirements to upgrade an existing equipment platform for optimal R–410A operation on the basis of its more numerous standard size manufacturer responses and its own estimates.

Even in a best-case scenario ($0.25 million per equipment platform, regardless of efficiency level, based on feedback from engineering interview), the non-standard PTAC and PTHP industry would have great difficulty meeting any standards level above baseline. As Table IV.5 illustrates, the industry burden to upgrade its equipment families to meet TSL 1 would exceed $20 million or approximately 40 percent of its total annual revenue. Higher TSL levels would impose even greater economic burdens. However unsustainable this impact is in the aggregate, the impact on individual businesses could be even greater.

For example, based on Dun & Bradstreet reports, one small manufacturer of non-standard PTACs and PTHPs is estimated to have sales of less than $5 million per year and currently ships approximately 12 different non-standard equipment platforms. DOE estimates that the company would have to spend approximately $3 million to meet any efficiency level (including baseline) using R–410A refrigerants. A $3 million equipment development expense translates into more than 60 percent of annual revenues or about 35 years worth of equipment development budget for this manufacturer, assuming it spends the industry average of 1.6 percent of revenues on research and development.

DOE estimates that on average, small manufacturers of non-standard PTACs and PTHPs require 25 years worth of equipment development budget to reach any efficiency level above baseline (which in itself will require about 14 years worth of equipment development budget). Because small businesses lack the scale to afford the required investments for R–410A conversion, certification requirements, and the equipment development required for energy conservation standards, adopting an efficiency standard above baseline is likely to cause some small businesses to exit the market. This situation suggests that the non-standard industry would reduce the number of equipment families and capacities even at baseline efficiency levels to keep equipment development expenses within manageable limits.

Table IV.6 describes DOE estimates regarding the average equipment development cost per unit by manufacturing scale and equipment lifetime. Manufacturing scale was roughly defined as small vs. large businesses whereas equipment lifetime defines the number of years that a specific equipment platform will stay in production without major changes or

revisions. In the standard PTAC and PTHP industry, the impact on the major manufacturers is relatively minor, regardless of whether they are small businesses or not, due to the scale at which they manufacture and because they only have one equipment platform to upgrade. However, in the non-standard industry the impact of scale and the number of equipment platforms is quite evident. The only large business operating in the non-standard industry segment offers fewer equipment platforms than any of its small business competitors, yet operates at a higher overall production volume than most of them. As a result, the per-unit conversion costs for the large business are significantly lower than those of its smaller competitors.

TABLE IV.6—IMPACT OF MANUFACTURING SCALE ON PER UNIT EQUIPMENT DEVELOPMENT COST

Per unit equipment development cost by industry segment versus equipment lifetime (years)		5	7	10	20
Standard PTAC and PTHP	Small Business	$6	$4	$3	$1
	Large Business Average	7	5	3	2
Non-Standard PTAC and PTHP	Small Business Average	136	97	68	34
	Large Business	45	32	22	11

The current wide scope of equipment families offered by the non-standard industry (over 100 equipment families from six manufacturers with thousands of SKUs) is thus likely to shrink dramatically in response to amended energy conservation standards by DOE. In particular, higher capacity units will be vulnerable for elimination since cabinet constraints may make required improvements to units infeasible to implement. Equipment manufacturers would be expected to cut their least popular equipment classes first, potentially eliminating multiple extant equipment platforms from the market altogether. However, cutting equipment classes by itself is difficult, since every equipment class (and its resultant enhancement and diversification of the revenue stream) adds some necessary manufacturing scale to the manufacturer. Once enough equipment classes are removed from its equipment offering, the manufacturer may lack the scale to operate.

A likely result of these market dynamics is that some manufacturers of non-standard PTACs and PTHPs will exit the market or consolidate with other small business manufacturers to meet even baseline efficiency requirements. At least in the initial years after the implementation date of the energy conservation standard, DOE estimates that most non-standard PTAC and PTHP equipment manufacturers will reduce their scope of equipment platforms by 50 percent or more in order to bring the required equipment development expenses down to more sustainable levels, which will be likely to affect consumer choices in the near term.

Whereas current equipment buyers benefit from being able to source non-standard equipment families from multiple manufacturers, the number of manufacturers for a specific type of non-standard PTAC or PTHP is likely to shrink as manufacturers cut back the equipment families they offer as a result of the R–410A conversion, certification requirements, and efficiency standards. Limited monopolistic or oligopolistic market conditions may result—limited only because consumers always have the option of modifying their building to allow the use of alternative cooling and heating equipment. Manufacturers also expect consumers to prolong the life of existing units via repairs and remanufacturing—and reduce demand for replacement units—if compliance with energy conservation standards results in higher replacement costs or the complete unavailability of replacement units.

2. PTAC and PTHP Labeling

In the NOPR, DOE stated that it believes that a label on PTAC and PTHP equipment that identifies the equipment class would be useful in enforcing both the energy conservation standards as well as the building codes and would assist States and other interested parties in determining which application correlates to a given PTAC or PTHP (based upon size). DOE invited public comment on the type of information and other requirements or factors, including format, it should consider in developing a proposed labeling rule for PTACs and PTHPs.

AHRI commented that it continues to support the ASHRAE Standard 90.1–1999 labeling requirements and believes that a label on the equipment identifying the equipment class would be useful. AHRI stated that it does not support a label similar to the EnergyGuide label used on consumer products and that such a label will do nothing to help commercial customers in making purchasing decisions. It asserted that product literature such as fact sheets and the AHRI Certified Directory are more effective in providing customers with energy efficiency information they need before purchasing PTACs and PTHPs. (AHRI, No. 23 at p. 7)

Carrier stated that the inclusion of an energy use information label for customers of PTAC and PTHP equipment would have little or no value since the purchasing entity will rely on the advice of the contractor or literature, not on ''labels''. The nameplates also provide an avenue for the performance information as necessary to confirm that they received what was requested. (Carrier, No. 16 at p. 6)

ACEEE and NRDC also commented that with regard to non-standard equipment, the path to a loophole-free standard requires adoption of labeling, code, and/or equivalent measures to prevent installation of non-standard PTAC and PTHP equipment in new construction. (ACEEE and NRDC, No. 26 at p. 3)

In developing the final rule, DOE considered the information identified by interested parties on the types of energy use or efficiency information commercial customers and owners of PTACs and PTHPs would find useful in making purchasing decisions. Before DOE can establish labeling rules, it must first ascertain whether the criteria outlined in the NOPR are met. 73 FR 18888–89. DOE will work with the Federal Trade Commission and other interested parties to determine the types of information and the forms (e.g., labels, fact sheets, or directories) that would be most useful for commercial customers and owners of PTACs and PTHPs. DOE continues to believe that a label on PTAC and PTHP equipment identifying the equipment class and efficiency level would be useful for enforcement of both the energy conservation standards as well as the building codes and would assist States and other interested parties in determining which application correlates to a given PTAC or PTHP

(based upon size) because it would help commercial customers identify the efficiency associated with the PTAC and PTHP equipment being placed into commercial buildings. As DOE stated in the NOPR, DOE anticipates proposing labeling requirements for PTAC and PTHP equipment in a separate rulemaking and is not incorporating a labeling requirement as part of today's final rule. 73 FR 18889.

V. Analytical Results and Conclusions

A. Trial Standard Levels

In the NOPR, DOE examined seven TSLs for standard size and non-standard size PTACs and PTHPs at the representative cooling capacities. 73 FR 18889. Each TSL represented a set of efficiency levels that describe a possible amended energy conservation standard for each equipment class. For the final rule, DOE did not consider TSL 7 for standard size equipment (see section IV.C) because DOE determined that TSL 7 represented an efficiency level that potentially could not be attained in the full range of cooling capacities for standard size equipment utilizing R–410A. In addition, DOE analyzed a new TSL for standard size PTACs and PTHPs—TSL A—which is adopted in today's final rule. TSL A combines the efficiency levels in TSL 3 and TSL 1 for standard size PTACs at the representative cooling capacities and the efficiency levels in TSL 5 and TSL 3 for standard size PTHPs at the representative cooling capacities. DOE's inclusion of TSL A recognizes the challenge manufacturers encounter when increasing the efficiency of larger cooling capacity equipment. Table V.1 presents the TSLs analyzed for standard size PTACs and PTHPs in today's final rule and the efficiency levels within each TSL for each class and size of equipment analyzed.

TABLE V.1—STANDARD SIZE PTACS AND PTHPS BASELINE EFFICIENCY LEVELS AND TSLS

Equipment class (cooling capacity)	Efficiency metric	Baseline (ASHRAE standard 90.1–1999)	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6 (Max-Tech)
Standard Size PTAC, 9,000 Btu/h	EER	10.6	10.9	10.9	11.1	11.1	10.9	11.3	11.5
Standard Size PTAC, 12,000 Btu/h ..	EER	9.9	10.2	10.2	10.4	10.2	10.2	10.6	10.8
Standard Size PTHP, 9,000 Btu/h	EER	10.4	10.9	11.1	11.1	11.3	11.3	11.3	11.5
	COP	3.0	3.1	3.2	3.2	3.3	3.3	3.3	3.3
Standard Size PTHP, 12,000 Btu/h ..	EER	9.7	10.2	10.4	10.4	10.4	10.6	10.6	10.8
	COP	2.9	3.0	3.1	3.1	3.1	3.1	3.1	3.1

Table V.2 presents the TSLs analyzed for non-standard size PTACs and PTHPs in today's final rule and the efficiency levels within each TSL for each class and size of equipment analyzed.

TABLE V.2—NON-STANDARD SIZE PTACS AND PTHPS BASELINE EFFICIENCY LEVELS AND TSLS

Equipment class (cooling capacity)	Efficiency metric	Baseline (ASHRAE standard 90.1–1999)	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5 (Max-Tech)
Non-Standard Size PTAC, 11,000 Btu/h	EER	8.6	9.4	9.4	9.7	9.4	10.0
Non-Standard Size PTHP, 11,000 Btu/h	EER	8.5	9.4	9.7	9.7	10.0	10.0
		2.6	2.8	2.8	2.8	2.9	2.9

As stated in the engineering analysis (Chapter 5 of the final rule TSD), current Federal energy conservation standards and the efficiency levels specified by ASHRAE Standard 90.1–1999 for PTACs and PTHPs are a function of the equipment's cooling capacity. Both the Federal energy conservation standards and the efficiency standards in ASHRAE Standard 90.1–1999 are based on equations that calculate the efficiency levels for PTACs and PTHPs with a cooling capacity greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h for each equipment class (see Table II.1). For the NOPR, DOE derived the proposed standards (*i.e.*, efficiency level as a function of cooling capacity) by plotting the representative cooling capacities and the corresponding efficiency levels for each TSL. DOE then calculated the equation of the line passing through the EER values for 9,000 Btu/h and 12,000 Btu/h for standard size PTACs and PTHPs. Chapter 9 of the NOPR TSD describes in detail how DOE determined the energy-efficiency equations for each TSL.

For the final rule, DOE used the energy-efficiency equations derived from the NOPR for TSLs 1, 2, 3, 4, 5, and 6 to extend the results from the representative cooling capacities to the entire range of cooling capacities of standard size PTACs and PTHPs. For TSL A, DOE calculated a new slope of the energy-efficiency equations using the methodology from the NOPR. Specifically, DOE calculated the equation of the line passing through the EER values for 9,000 Btu/h and 12,000 Btu/h for standard size PTACs and PTHPs. Table V.3 and Table V.4 identify the energy-efficiency equations for each TSL for standard size PTACs and PTHPs.

TABLE V.3—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR STANDARD SIZE PTACS

Standard size ** PTACs	Energy-efficiency equation *
Baseline ASHRAE Standard 90.1–1999	EER = 12.5 − (0.213 × Cap†/1000)

TABLE V.3—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR STANDARD SIZE PTACS—Continued

Standard size ** PTACs	Energy-efficiency equation *
TSL 1	EER = 13.0 − (0.233 × Cap †/1000)
TSL 2	EER = 13.0 − (0.233 × Cap †/1000)
TSL 3	EER = 13.2 − (0.233 × Cap †/1000)
TSL A	EER = 13.8 − (0.300 × Cap †/1000)
TSL 4	EER = 13.0 − (0.233 × Cap †/1000)
TSL 5	EER = 13.4 − (0.233 × Cap †/1000)
TSL 6	EER = 13.6 − (0.233 × Cap †/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively cooled products, and at 85 °F entering water temperature for water-cooled products.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions having an external wall opening greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches.

† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

TABLE V.4—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR STANDARD SIZE PTHPS

Standard size ** PTHPs	Energy-efficiency equation *
Baseline ASHRAE Standard 90.1–1999	EER = 12.3 − (0.213 × Cap†/1000) COP = 3.2 − (0.026 × Cap †/1000)
TSL 1	EER = 13.0 − (0.233 × Cap †/1000) COP = 3.6 − (0.046 × Cap †/1000)
TSL 2	EER = 13.2 − (0.233 × Cap †/1000) COP = 3.6 − (0.044 × Cap †/1000)
TSL 3	EER = 13.2 − (0.233 × Cap †/1000) COP = 3.6 − (0.044 × Cap †/1000)
TSL A	EER = 14.0 − (0.300 × Cap †/1000) COP = 3.7 − (0.052 × Cap †/1000)
TSL 4	EER = 13.4 − (0.233 × Cap †/1000) COP = 3.7 − (0.053 × Cap †/1000)
TSL 5	EER = 13.4 − (0.233 × Cap †/1000) COP = 3.7 − (0.053 × Cap †/1000)
TSL 6	EER = 13.6 − (0.233 × Cap †/1000) COP = 3.8 − (0.053 × Cap †/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled and evaporatively cooled products, and at 85 °F entering water temperature for water-cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions having an external wall opening greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches.

† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

For non-standard size PTACs and PTHPs, DOE used the ASHRAE Standard 90.1–1999 equation slope and the representative cooling capacity (*i.e.*, 11,000 Btu/h cooling capacity) to determine the energy-efficiency equations corresponding to each TSL in the NOPR. Chapter 9 of the NOPR TSD details how DOE determined the energy-efficiency equations for each TSL. For the final rule, DOE used the energy-efficiency equations presented in the NOPR for TSLs 1 through 5 to extend the results from the representative cooling capacities to the entire range of cooling capacities of non-standard size PTACs and PTHPs. Table V.5 and Table V.6 identify the energy-efficiency equations for each TSL for non-standard size PTAC and PTHP.

TABLE V.5—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR NON-STANDARD SIZE PTACS

Non-standard size ** PTACs	Energy-efficiency equation *
Baseline ASHRAE Standard 90.1 − 1999	EER = 10.9 − (0.213 × Cap†/1000)
TSL 1	EER = 11.7 − (0.213 × Cap †/1000)
TSL 2	EER = 11.7 − (0.213 × Cap †/1000)
TSL 3	EER = 12.0 − (0.213 × Cap †/1000)
TSL 4	EER = 11.7 − (0.213 × Cap †/1000)
TSL 5	EER = 12.3 − (0.213 × Cap †/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled and evaporatively cooled products, and at 85 °F entering water temperature for water-cooled products.

** Non-standard size refers to PTAC or PTHP equipment with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches.

† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

TABLE V.6—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR NON-STANDARD SIZE PTHPS

Non-standard size ** PTHPs	Energy-efficiency equation *
Baseline ASHRAE Standard 90.1–1999	EER = 10.8 − (0.213 × Cap †/1000) COP = 2.9 − (0.026 × Cap †/1000)
TSL 1	EER = 11.7 − (0.213 × Cap †/1000) COP = 3.1 − (0.026 × Cap †/1000)
TSL 2	EER = 12.0 − (0.213 × Cap †/1000) COP = 3.1 − (0.026 × Cap †/1000)
TSL 3	EER = 12.0 − (0.213 × Cap †/1000) COP = 3.1 − (0.026 × Cap †/1000)
TSL 4	EER = 12.3 − (0.213 × Cap †/1000) COP = 3.1 − (0.026 × Cap †/1000)
TSL 5	EER = 12.3 − (0.213 × Cap †/1000) COP = 3.1 − (0.026 × Cap †/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled and evaporatively cooled products, and at 85 °F entering water temperature for water-cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps.

** Non-standard size refers to PTAC or PTHP equipment with existing wall sleeve dimensions having an eternal wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches.

† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

For PTACs and PTHPs with a cooling capacity of less than 7,000 Btu/h, DOE determined the EERs using a cooling capacity of 7,000 Btu/h in the energy-efficiency equations. For PTACs and PTHPs with a cooling capacity greater than 15,000 Btu/h cooling capacity, DOE determined the EERs using a cooling capacity of 15,000 Btu/h in the energy-efficiency equations. This is the same method established in the Energy Policy Act of 1992 and provided in ASHRAE Standard 90.1–1999 for calculating the EER and COP of equipment with cooling capacities less than 7,000 Btu/h and greater than 15,000 Btu/h.

B. Significance of Energy Savings

To estimate the energy savings through 2042 due to amended standards, DOE compared the energy consumption of packaged terminal equipment under the base case (standards at the levels in ASHRAE Standard 90.1–1999) to energy consumption of this equipment under each standards case (i.e., each TSL, or set of amended standards, that DOE has considered). Table V.7 and Table V.8 summarize DOE's NES estimates, which are based on the *AEO2008* energy price forecast, for each TSL. Chapter 11 of the TSD describes these estimates in more detail. The tables provide both undiscounted and discounted values of energy savings from 2012 through 2042. Discounted energy savings at rates of 7 percent and 3 percent represent a policy perspective where energy savings farther in the future are less significant than energy savings closer to the present. Each TSL that is more stringent than the corresponding level in ASHRAE Standard 90.1–1999 results in additional energy savings, ranging from 0.015 quads to 0.068 quads for TSLs 1 through 6 for standard size PTAC and PTHP equipment classes, and from 0.004 to 0.009 quads for TSLs 1 through 5 for non-standard size PTAC and PTHP equipment classes.

TABLE V.7—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR STANDARD SIZE PTACS AND PTHPS

[Energy savings for units sold from 2012 to 2042]

Primary national energy savings (quads) (sum of all equipment classes)	Trial standard level		
	Undiscounted	3% Discounted	7% Discounted
1	0.015	0.007	0.003
2	0.024	0.012	0.006
3	0.031	0.016	0.007
A	0.032	0.016	0.007
4	0.033	0.017	0.008
5	0.049	0.025	0.011
6	0.068	0.035	0.015

TABLE V.8—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR NON-STANDARD SIZE PTACS AND PTHPS

[Energy savings for units sold from 2012 to 2042]

Primary national energy savings (quads) (sum of all equipment classes)	Trial standard level		
	Undiscounted	3% Discounted	7% Discounted
1	0.004	0.002	0.001
2	0.004	0.002	0.001
3	0.005	0.003	0.001
4	0.006	0.003	0.001

TABLE V.8—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR NON-STANDARD SIZE PTACS AND PTHPS—Continued

[Energy savings for units sold from 2012 to 2042]

Primary national energy savings (quads) (sum of all equipment classes)	Trial standard level		
	Undiscounted	3% Discounted	7% Discounted
5	0.009	0.004	0.002

Several commenters noted the potential for equipment switching where TSLs resulted in higher cooling efficiency requirements for PTHP and PTAC of the same cooling capacity. Higher cooling efficiency requirements would result in an increase in the price differential of minimum efficiency PTHP and PTAC equipment, causing some PTHP customers to shift to a PTAC with electric resistance heat.

From the perspective of assessing the energy savings achieved by a standard at a defined TSL, the primary concern from this anticipated equipment switching is the loss in energy savings that could result if some fraction of the PTHP market switches to the use of PTAC with electric resistance heat. While DOE recognizes that some PTHP customers might also switch to the use of fossil fuel (e.g. hydronic) heating, the relatively small fraction of the existing PTAC customers who currently use hydronic heat for the spaces served by PTAC (estimated at less than 1%), and the difficulty of retrofitting hydronic heating into buildings that do not use it suggests that the total fraction of the market that would opt for PTAC with hydronic heating is small. The majority of the total packaged terminal equipment market (PTAC and PTHP) currently uses PTAC with electric resistance heat, which supports the possibility that some purchasers would choose to switch from PTHPs to PTACs.

DOE did not have the information with which to assess the elasticity of the PTHP market with regards to this switching between PTHP and PTAC. To assess the significance of a shift from PTHP to PTAC purchases, DOE calculated the total fraction of the heat pump market that would need to shift to the purchase of PTAC equipment to negate the energy savings from increasing the PTHP cooling efficiency above that of the PTAC equipment. Two TSLs were first examined, TSL 2, and TSL 4. For standard size PTAC and PTHP equipment, TSL 2 has the same EER requirements for PTAC as TSL 1 but has a 0.2 EER increase for PTHP equipment as compared with TSL 1. For TSL 2, DOE calculated that a shift of 2.0 percent of the heat pump market to the use of PTAC with electric resistance would be sufficient to offset the energy savings difference between TSL 1 and TSL 2. If PTAC and PTHP standards were set at TSL 2, the purchase price differential between the two would increase on the order of $11, which would represent an increase of approximately 9.4 percent increase in the purchase price differential between PTAC and PTHP over TSL 1. This increase in the purchase price differential results from the increased PTHP efficiency at TSL 2. At TSL 1, the average annual payback in 2012 for a PTHP over a PTAC was calculated at approximately 2.10 years. At TSL 2, the average annual payback for a PTHP over a PTAC was 2.18 years. The average PBP for purchase of a PTHP over a PTAC increased 3.7 percent between TSL 1 and TSL 2.

Similarly, for TSL 4, DOE calculated that a shift of 3.8 percent of the heat pump market to the use of PTAC with electric resistance would offset the energy savings difference between TSL 1 and TSL 4. If PTAC and PTHP standards were set at TSL 4, the purchase price differential between the two would increase on the order of $22, or an 18.8 percent increase in the purchase price differential compared to that at TSL 1. This increase in price reflects the higher efficiency of the PTHP equipment at TSL 2 and TSL 4. At TSL 4, the average annual payback for purchase of a PTHP over a PTAC was 2.29 years. The average PBP for purchase of a PTHP over a PTAC increased approximately 9.2 percent between TSL 1 and TSL 4.

DOE also examined TSL A in light of potential equipment switching. In the case of TSL A, there is no comparable TSL considered by DOE that had a PTAC cooling efficiency level identical to TSL A but with PTHP cooling efficiencies at the same efficiency level. However, the nominal difference between PTHP and PTAC EER levels at TSL A, 0.2 EER, is identical to the nominal difference in EER levels at TSL 2 for all capacities. The difference in equipment price between a PTHP and PTAC at TSL A is $127 for a 9,000 Btu/h unit and $129 for a 12,000 Btu/h unit, which is virtually identical to the price differential at TSL 2, and represents a 9.2 percent increase in differential purchase price compared with TSL 1. DOE examined the energy savings at TSL A and TSL 1 for standard size PTAC and PTHP equipment only, and determined that under TSL A, it would take approximately 4.0 percent of standard size PTHP users to switch to a PTAC to negate the energy savings for TSL A over TSL 1. At TSL A, the estimated PBP for purchase of a PTHP over a PTAC under average use conditions was estimated at 2.15 years. Given the very small increase in differential purchase price between PTAC and PTHP at TSL A compared with standards set at identical efficiency levels (TSL 1) and the minimal difference in payback period at TSL A compared to TSL 1, DOE concludes that it is unlikely that an efficiency Standard set at TSL A would result in a significant number of standard size PTHP customers opting to instead purchase PTAC equipment with electric resistance heat.

C. Economic Justification

1. Economic Impact on Commercial Consumers

a. Life-Cycle Costs and Payback Period

Commercial consumers will be affected by the standards because they will experience higher purchase prices and lower operating costs. Generally, these impacts are best captured by changes in life-cycle costs and payback period. To determine these impacts, DOE calculated the LCC and PBP for the standard levels considered in this proceeding. DOE's LCC and PBP analyses provided five key outputs for each TSL, which are reported in Table V.9 through Table V.14. The first three outputs in each table are the proportion of PTAC or PTHP purchases in which the purchase of a design that complies with the TSL would create a net life-cycle cost, no impact, or a net life-cycle cost savings for the consumer. The fourth output is the average net life-cycle savings from purchasing a complying design compared with purchasing baseline equipment.

The fifth output is the average PBP for the consumer purchasing a design that complies with the TSL compared with purchasing baseline equipment. The PBP is the number of years it would take for the customer to recover, as a result of energy savings, the increased costs of higher-efficiency equipment based on the operating cost savings from the first year of ownership. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. TSD Chapter 8 details the LCC and PBP analyses.

TABLE V.9—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTAC WITH A COOLING CAPACITY OF 9,000 BTU/H

	Trial standard level *						
	1	2	3	A	4	5	6
EER	10.9	10.9	11.1	11.1	10.9	11.3	11.5
PTAC with Net LCC Increase (%)	15	15	30	30	15	46	62
PTAC with No Change in LCC (%)	77	77	56	56	77	37	18
PTAC with Net LCC Savings (%)	7	7	14	14	7	17	21
Mean LCC Savings (2007$)	(1)	(1)	(3)	(3)	(1)	(6)	(10)
Mean Payback Period (years)	13.0	13.0	13.7	13.7	13.0	14.5	15.2

* Numbers in parentheses indicate negative LCC savings, *i.e.*, an increase in LCC. Detailed percentage changes may not sum to 100% due to rounding.

TABLE V.10—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTHP WITH A COOLING CAPACITY OF 9,000 BTU/H

	Trial standard level *						
	1	2	3	A	4	5	6
EER	10.9	11.1	11.1	11.3	11.3	11.3	11.5
PTHP with Net LCC Increase (%)	7	10	10	13	13	13	24
PTHP with No Change in LCC (%)	78	57	57	37	37	37	18
PTHP with Net LCC Savings (%)	16	33	33	50	50	50	58
Mean LCC Savings (2007$)	11	20	20	28	28	28	24
Mean Payback Period (years)	5.1	4.5	4.5	4.4	4.4	4.4	5.1

* Numbers in parentheses indicate negative LCC savings, *i.e.*, an increase in LCC. Detailed percentage changes may not sum to 100% due to rounding.

TABLE V.11—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTAC WITH A COOLING CAPACITY OF 12,000 BTU/H

	Trial standard level *						
	1	2	3	A	4	5	6
EER	10.2	10.2	10.4	10.2	10.2	10.6	10.8
PTAC with Net LCC Increase (%)	16	16	31	16	16	48	65
PTAC with No Change in LCC (%)	77	77	56	77	77	36	18
PTAC with Net LCC Savings (%)	7	7	13	7	7	16	17
Mean LCC Savings * (2007$)	(2)	(2)	(5)	(2)	(2)	(10)	(15)
Mean PBP (years)	13.1	13.1	14.0	13.1	13.1	14.9	15.9

* Numbers in parentheses indicate negative savings, *i.e.*, an increase in LCC. Detailed percentage changes may not sum to 100% due to rounding.

TABLE V.12—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTHP WITH A COOLING CAPACITY OF 12,000 BTU/H

	Trial standard level *						
	1	2	3	A	4	5	6
EER	10.2	10.4	10.4	10.4	10.6	10.6	10.8
PTHP with Net LCC Increase (%)	7	10	10	10	21	21	35
PTHP with No Change in LCC (%)	77	57	57	57	37	37	18
PTHP with Net LCC Savings (%)	16	33	33	33	42	42	47
Mean LCC Savings (2007$)	13	24	24	24	20	20	14
Mean PBP (years)	5.1	4.6	4.6	4.6	5.5	5.5	6.4

* Numbers in parentheses indicate negative savings, *i.e.*, an increase in LCC. Detailed percentage changes may not sum to 100% due to rounding.

TABLE V.13—SUMMARY LCC AND PBP RESULTS FOR NON-STANDARD SIZE PTACS WITH A COOLING CAPACITY OF 11,000 BTU/H

	Trial standard level *				
	1	2	3	4	5
EER	9.4	9.4	9.7	9.4	10.0
PTAC with Net LCC Increase (%)	6	6	14	6	25
PTAC with No Change in LCC (%)	73	73	47	73	23
PTAC with Net LCC Savings (%)	22	22	39	22	52
Mean LCC Savings (2007$)	26	26	30	26	31
Mean PBP (years)	4.4	4.4	5.1	4.4	5.9

* Numbers in parentheses indicate negative savings, *i.e.*, an increase in LCC. Detailed percentage changes may not sum to 100% due to rounding.

TABLE V.14—SUMMARY LCC AND PBP RESULTS FOR NON-STANDARD SIZE PTHPS WITH A COOLING CAPACITY OF 11,000 BTU/H

	Trial standard level *				
	1	2	3	4	5
EER	9.4	9.7	9.7	10.0	10.0
PTHP with Net LCC Increase (%)	1	3	3	5	5
PTHP with No Change in LCC (%)	73	47	47	23	23
PTAC with Net LCC Savings (%)	27	50	50	72	72
Mean LCC Savings (2007$)	62	66	66	80	80
Mean PBP (years)	2.2	2.8	2.8	3.0	3.0

* Numbers in parentheses indicate negative savings, *i.e.*, an increase in LCC. Detailed percentage changes may not sum to 100% due to rounding.

For PTACs and PTHPs with a cooling capacity of less than 7,000 Btu/h, DOE established the energy conservation standards using a cooling capacity of 7,000 Btu/h in the efficiency-capacity equation (see section VI.A). The LCC and PBP impacts for equipment in this category will be similar to the impacts for the 9,000 Btu/h units because the MSP and usage characteristics are in a similar range. Similarly, for PTACs and PTHPs with a cooling capacity greater than 15,000 Btu/h, DOE established the energy conservation standards using a cooling capacity of 15,000 Btu/h in the efficiency-capacity equation. Further, for PTACs and PTHPs with a cooling capacity greater than 15,000 Btu/h, DOE established that the impacts will be similar for units with a cooling capacity of 12,000 Btu/h. Section V.A of today's final rule provides more details on how DOE developed the energy-efficiency equations based on the analysis results for the representative cooling capacities.

b. Commercial Consumer Subgroup Analysis

DOE estimated commercial consumer subgroup impacts by determining the LCC impacts at each TSL on small businesses, such as small independent hotels and motels. Table V.15 shows the mean LCC savings from the final energy conservation standards; Table V.16 shows the mean payback period (in years) for this subgroup of commercial consumers. DOE's analysis using the LCC spreadsheet model indicated that the LCC and PBP impacts on the small independent hotels and motels were similar to the corresponding impacts on the larger population of the commercial consumers. Chapter 12 of the TSD explains DOE's method for conducting the consumer subgroup analysis and presents the detailed results of that analysis.

TABLE V.15—MEAN LIFE-CYCLE COST SAVINGS FOR PTAC OR PTHP EQUIPMENT PURCHASED BY LCC SUBGROUPS (2007$)

Equipment class (cooling capacity)	Trial standard level						
Standard Size	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6
Standard Size PTAC (9,000 Btu/h)	(2)	(2)	(5)	(5)	(2)	(9)	(13)
Standard Size PTHP (9,000 Btu/h)	8	16	16	22	22	22	17
Standard Size PTAC (12,000 Btu/h)	(4)	(4)	(7)	(4)	(4)	(13)	(19)
Standard Size PTHP (12,000 Btu/h)	10	18	18	18	13	13	7

Non-Standard Size	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Non-Standard Size PTAC	22	22	24	22	23
Non-Standard Size PTHP	54	56	56	68	68

* Numbers in parentheses indicate negative savings.

TABLE V.16—MEAN PAYBACK PERIOD FOR PTAC OR PTHP EQUIPMENT PURCHASED BY LCC SUBGROUPS (YEARS)

Equipment class (cooling capacity)	Trial standard level						
Standard Size	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6
Standard Size PTAC (9,000 Btu/h)	13.0	13.0	13.6	13.6	13.0	14.4	15.1
Standard Size PTHP (9,000 Btu/h)	5.0	4.5	4.5	4.4	4.4	4.4	5.1
Standard Size PTAC (12,000 Btu/h)	13.1	13.1	13.9	13.1	13.1	14.8	15.8
Standard Size PTHP (12,000 Btu/h)	5.1	4.6	4.6	4.6	5.5	5.5	6.3
Non-Standard Size	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5		
Non-Standard Size PTAC	4.4	4.4	5.1	4.4	5.9		
Non-Standard Size PTHP	2.2	2.8	2.8	2.9	2.9		

2. Economic Impact on Manufacturers

DOE described the qualitative economic impacts of today's standard on manufacturers in the NOPR. 73 FR 18893–99. This analysis is described in greater detail in Chapter 13 of the TSD.

As part of its NOPR analysis, DOE analyzed two distinct markup scenarios: (1) The flat markup scenario, and (2) the partial cost recovery markup scenario. 73 FR 18886. The flat markup scenario can also be characterized as the ''preservation of gross margin percentage'' scenario. Under this scenario, DOE applied, across all TSLs, a single uniform ''gross margin percentage'' markup that DOE believes represents the current markup for manufacturers in the PTAC and PTHP industry. This flat markup scenario implies that, as production costs increase with efficiency, the absolute dollar markup will also increase. DOE calculated that the non-production cost markup, which consists of SG&A expenses, R&D expenses, interest, and profit, is 1.29. This markup is consistent with the one DOE used in its engineering and GRIM analyses for the base case.

The implicit assumption behind the ''partial cost recovery'' scenario is that the industry can pass-through only part of its regulatory-driven increases in production costs to consumers in the form of higher prices. DOE implemented this markup scenario in the GRIM by setting the non-production cost markups at each TSL to yield an increase in MSP equal to half the increase in production cost.

Together, these two markup scenarios characterize the markup conditions described by manufacturers, and reflect the range of market responses manufacturers expect as a result of the R–22 phaseout and the amended energy conservation standards (See Chapter 13 of the TSD for additional details of the markup scenarios.). For this final rule, DOE also examined both of these scenarios.

a. Industry Cash-Flow Analysis Results

Using the two different markup scenarios described above, DOE estimated the impact of amended standards for PTACs and PTHPs on the INPV of the package terminal equipment industry. See 73 FR 18886–87 and 18893–94. The impact of new standards on INPV consists of the difference between the INPV in the base case and the INPV in the standards case. INPV is the primary metric used in the MIA, and represents one measure of the fair value of the industry in today's dollars. DOE calculated the INPV by summing all of the net cash flows, discounted at the industry's cost of capital or discount rate.

Table V.17 through Table V.20 show the estimated changes in INPV for manufacturers of standard size packaged terminal equipment and non-standard size packaged terminal equipment, respectively, that would result from the TSLs DOE considered for this final rule. The tables also present the equipment conversion expenses and capital investments that the industry would incur at each TSL. Equipment conversion expenses include engineering, prototyping, testing, and marketing expenses incurred by a manufacturer as it prepares to comply with a standard. Capital investments are the one-time outlays for equipment and buildings required for the industry to comply (*i.e.*, conversion capital expenditures).

TABLE V.17—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR STANDARD SIZE PTACS AND PTHPS UNDER THE FLAT MARKUP SCENARIO

R–410A full cost recovery with amended energy standards full recovery of increased cost									
	Units	Base case	Trial standard level						
			1	2	3	A	4	5	6
INPV	(2007$ millions)	427	424	421	424	419	419	426	423
Change in INPV	(2007$ millions)		−3	−6	−3	−8	−8	−1	−4
	(%)		−0.8	−1.4	−0.8	−1.9	−1.9	−0.2	−0.9
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2007$ millions)		4.5	7.4	6.3	9.1	10.6	7.2	13.5
Amended Energy Conservation Standards Capital Conversion Expenses.	(2007$ millions)		3.5	5.7	4.9	8.2	8.2	5.6	10.4

TABLE V.17—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR STANDARD SIZE PTACS AND PTHPS UNDER THE FLAT MARKUP SCENARIO—Continued

R–410A full cost recovery with amended energy standards full recovery of increased cost									
	Units	Base case	Trial standard level						
			1	2	3	A	4	5	6
Total Energy Conservation Standards Investment Required.	(2007$ millions)	.....	8.0	13.2	11.2	17.3	18.7	12.8	23.9

TABLE V.18—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR STANDARD SIZE PTACS AND PTHPS UNDER THE PARTIAL COST RECOVERY MARKUP SCENARIO

R–410A base case full cost recovery with amended energy standards partial cost recovery									
	Units	Base case	Trial standard level						
			1	2	3	A	4	5	6
INPV	(2007$ millions)	427	399	382	367	366	359	325	263
Change in INPV	(2007$ millions)	.....	−28	−45	−60	−61	−68	−103	−164
	(%)	.....	−6.6	−10.7	−14.0	−14.3	−16.0	−24.0	−38.3
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2007$ millions)	.....	4.5	7.4	6.3	9.1	10.6	7.2	13.5
Amended Energy Conservation Standards Capital Conversion Expenses.	(2007$ millions)	.....	3.5	5.7	4.9	8.2	8.2	5.6	10.4
Total Energy Conservation Standards Investment Required.	(2007$ millions)	.....	8.0	13.2	11.2	17.3	18.7	12.8	23.9

TABLE V.19—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR NON-STANDARD SIZE PTACS AND PTHPS UNDER THE FLAT MARKUP SCENARIO

R–410A full cost recovery with amended energy standards full recovery of increased cost							
	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2007$ millions)	30	14	13	13	9	11
Change in INPV	(2007$ millions)	.....	−16	−17	−17	−21	−20
	(%)	.....	−53.6	−57.6	−56.3	−68.5	−64.8
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2007$ millions)	.....	20.5	21.0	21.0	23.8	23.8
Amended Energy Conservation Standards Capital Conversion Expenses.	(2007$ millions)	.....	1.3	2.3	2.0	3.6	2.6
Total Energy Conservation Standards Investment Required.	(2007$ millions)	.....	21.8	23.3	23.0	27.3	26.4

TABLE V.20—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR NON-STANDARD SIZE PTACS AND PTHPS UNDER THE PARTIAL COST RECOVERY MARKUP SCENARIO

R–410A base case full cost recovery with amended energy standards partial cost recovery							
	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2007$ millions)	30	13	11	10	7	6
Change in INPV	(2007$ millions)	.....	−17	−19	−20	−23	−24
	(%)	.....	−57.8	−63.8	−65.4	−78.0	−81.2
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2007$ millions)	.....	20.5	21.0	21.0	23.8	23.8

TABLE V.20—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR NON-STANDARD SIZE PTACS AND PTHPS UNDER THE PARTIAL COST RECOVERY MARKUP SCENARIO—Continued

R–410A base case full cost recovery with amended energy standards partial cost recovery							
	Units	Base case	Trial standard level				
			1	2	3	4	5
Amended Energy Conservation Standards Capital Conversion Expenses.	(2007$ millions)	.....	1.3	2.3	2.0	3.6	2.6
Total Energy Conservation Standards Investment Required.	(2007$ millions)	.....	21.8	23.3	23.0	27.3	26.4

The NOPR provides a discussion of the estimated impact of amended PTAC and PTHP standards on INPV for each equipment class. 73 FR 18893–97. This qualitative discussion on the estimated impacts of amended PTAC and PTHP standards in INPV for each equipment class for the final rule can be found in Chapter 13 of the TSD.

b. Impacts on Employment

As discussed in the NOPR, DOE expects no significant, discernable direct employment impacts on both standard size and non-standard size PTAC and PTHP manufacturers under today's standards compared to the base case, or under any of the TSLs considered for today's rule. 73 FR 18898. Today's notice estimates the impacts on U.S. production workers in the standard size and non-standard size PTAC and PTHP industry impacted by the final rule. The estimated impacts are shown in Table V.21. For the standard size PTAC and PTHP industry, DOE does not expect negative direct employment impacts because the labor content of each unit produced is expected to be slightly higher and the total number of units produced is expected to be the same. Furthermore, based on interviews with domestic manufacturers, DOE expects the proportion of units produced domestically to remain unchanged. Therefore, DOE presents a scenario where employment increases as a function of increasing production costs.

For the non-standard size PTAC and PTHP industry, DOE reports a range of possible domestic employment impacts. Assuming shipment levels and product availability remain at the levels experienced in the current market, DOE expects a slight increase in domestic employment as characterized by the high-bound scenario. However, if either shipments drop or if manufacturers respond to higher labor requirements by shifting production to lower-labor-cost countries, DOE expects that there could be reductions in total domestic employment as characterized by the low-bound scenario. Further support for these conclusions is set forth in Chapter 13 of the final rule TSD.

TABLE V.21—CHANGE IN TOTAL NUMBER OF DOMESTIC PRODUCTION EMPLOYEES IN 2012 IN THE STANDARD SIZE AND NON-STANDARD SIZE PTAC AND PTHP MANUFACTURING INDUSTRY*

	Standard size PTAC and PTHP manufacturing industry						
	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6
Change in Total Number of Domestic Production Employees in 2012	1	2	3	3	3	6	9
	Non-standard size PTAC and PTHP manufacturing industry						
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5		
Change in Total Number of Domestic Production Employees in 2012 ..	(106)—1	(106)—1	(107)—1	(107)—1	(108)—2		

*Numbers in parentheses indicate a loss in domestic employment.

3. National Net Present Value and Net National Employment

The NPV analysis estimates the cumulative benefits or costs to the Nation that would result from particular standard levels. While the NES analysis estimates the energy savings from each standard level DOE considers, relative to the base case, the NPV analysis estimates the national economic impacts of each such level relative to the base case. Table V.22 and Table V.23 provide an overview of the NPV results for PTACs and PTHPs, respectively, using both a 7-percent and a 3-percent real discount rate. See TSD Chapter 11 for more detailed NPV results.

TABLE V.22—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR STANDARD SIZE PTACS AND PTHPS

Trial standard level	PTAC NPV* (million 2007$)		PTHP NPV* (million 2007$)		PTAC and PTHP NPV* (million 2007$)	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate
1	($3)	($1)	$4	$18	$1	$17
2	(3)	(1)	12	44	8	43

TABLE V.22—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR STANDARD SIZE PTACS AND PTHPS—Continued

Trial standard level	PTAC NPV* (million 2007$)		PTHP NPV* (million 2007$)		PTAC and PTHP NPV* (million 2007$)	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate
3	(9)	(6)	12	44	2	38
A	(5)	(3)	15	57	10	54
4	(3)	(1)	10	50	6	49
5	(20)	(20)	10	50	(11)	31
6	(38)	(43)	(3)	34	(41)	(10)

* Numbers in parentheses indicate negative NPV, *i.e.*, a net cost. Detail may not appear to sum to total due to rounding.

TABLE V.23—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR NON-STANDARD SIZE PTACS AND PTHPS

Trial standard level	PTAC NPV* (million 2007$)		PTHP NPV* (million 2007$)		PTAC and PTHP NPV* (million 2007$)	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate
1	$2	$6	$3	$8	$5	$14
2	2	6	4	10	6	16
3	3	8	4	10	7	19
4	2	6	6	17	8	23
5	4	11	6	17	10	29

* Numbers in parentheses indicate negative NPV, *i.e.*, a net cost. Detail may not appear to sum to total due to rounding.

Using a 3-percent discount rate increases the present value of future equipment purchase costs and operating cost savings. Because annual operating cost savings in later years grow at a faster rate than annual equipment purchase costs, using a 3-percent discount rate increases the NPV at most TSLs. (See TSD Chapter 11.)

DOE also estimated the national employment impacts that would result from each TSL. As discussed in the NOPR, 73 FR 18887, 18899–900, DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor. As Table V.24 and Table V.25 illustrate, DOE estimates net indirect employment impacts—those changes of employment in the larger economy (other than in the manufacturing sector being regulated)—from PTAC and PTHP energy conservation standards to be positive but very small relative to total national employment, primarily due to the small net monetary savings from PTAC and PTHP standards available for transfer to other sectors, relative to the economy as a whole. This increase would likely be sufficient to fully offset any adverse impacts on employment that might occur in the packaged terminal equipment industry. For details on the employment impact analysis methods and results, see TSD Chapter 15.

TABLE V.24—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT, JOBS IN 2042, STANDARD SIZE PTACS AND PTHPS

Trial standard level	Net national change in jobs (number of jobs)	
	PTACs	PTHPs
1	14	27
2	14	56
3	31	56
A	20	71
4	14	82
5	56	82
6	86	104

TABLE V.25—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT, JOBS IN 2042, NON-STANDARD SIZE PTACS AND PTHPS

Trial standard level	Net national change in jobs (number of jobs)	
	PTACs	PTHPs
1	3	5
2	3	6
3	6	6
4	3	11
5	9	11

4. Impact on Utility or Performance of Equipment

DOE believes that the standards it is adopting today will not lessen the utility or performance of any PTAC or PTHP because of the steps DOE has taken to establish product classes and evaluate design options and the impact of potential standard levels, as indicated in section V.B.4 of the NOPR. 73 FR 18900. DOE stated in the NOPR, it was concerned about the potential misclassification of a portion of the non-standard size market if the delineations within ASHRAE Standard 90.1–1999 were adopted by DOE. 73 FR 18865. DOE has mitigated non-standard manufacturers' concerns by adopting the delineations within Addendum t to ASHRAE Standard 90.1–2007 for distinguishing various sleeve size equipment.

5. Impact of Any Lessening of Competition

As discussed in the NOPR, 73 FR 18865, 18900, and in section III.D.5 of this notice, DOE considered any lessening of competition likely to result from standards. The Attorney General determines the impact of any such lessening of competition.

In its comment on the NOPR, DOJ expressed concerns about whether the proposed standards would adversely affect competition. In particular, DOJ stated its belief that the efficiency levels for non-standard size PTACs and PTHPs in the NOPR may create a risk that is too

strict for the manufacturers to satisfy given the state of the technology. DOJ further commented that non-standard customers could face the choice of incurring capital expenditures to alter the size of the wall opening to accommodate standard size PTACs and PTHPs if non-standard size units become unavailable. DOJ also stated its concerns regarding the efficiency levels for standard size PTHPs proposed in the NOPR, arguing the proposed levels would be too stringent for the manufacturers to achieve. (DOJ, No. 21 at p. 1–2) The Attorney General's response is reprinted at the end of today's rulemaking.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of PTACs and PTHPs, where economically justified, is likely to improve the security of the Nation's energy system by reducing overall demand for energy, and thus, reducing the Nation's reliance on foreign sources of energy. Reduced demand is also likely to improve the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, DOE expects the amended standards covered under this rulemaking to eliminate the need for construction of between approximately 40 megawatts and 196 megawatts of new power by 2042.

Enhanced energy efficiency also produces environmental benefits. The expected energy savings from higher standards for the products covered by this rulemaking will reduce the emissions of air pollutants and greenhouse gases associated with energy production and building use of fossil fuels. Table V.26 and Table V.27 show cumulative CO_2, NO_X, and Hg emissions reductions for standard size and non-standard size PTACs and PTHPs by TSL over the rulemaking period. The expected energy savings from amended standards will reduce the emissions of greenhouse gases associated with energy production, and may reduce the cost of maintaining nationwide emissions standards and constraints.

TABLE V.26—SUMMARY OF EMISSIONS REDUCTIONS FOR STANDARD SIZE PTACS AND PTHPS (CUMULATIVE REDUCTIONS FOR EQUIPMENT SOLD FROM 2012 TO 2042)

	Trial standard levels						
	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6
Emissions Reductions for PTACs *							
CO_2 (Mt)	0.20	0.20	0.45	0.29	0.20	0.79	1.22.
NO_X (kt)	0.01 to 0.31	0.01 to 0.31	0.03 to 0.69	0.02 to 0.45	0.01 to 0.31	0.05 to 1.23	0.08 to 1.88.
Hg (t)	0 to 0.007	0 to 0.007	0 to 0.016	0 to 0.010	0 to 0.007	0 to 0.028	0 to 0.043.
Emissions Reductions for PTHPs *							
CO_2 (Mt)	0.29	0.61	0.61	0.77	0.88	0.88	1.12.
NO_X (kt)	0.03 to 0.63	0.05 to 1.33	0.05 to 1.33	0.07 to 1.68	0.08 to 1.94	0.08 to 1.94	0.10 to 2.46.
Hg (t)	0 to 0.010	0 to 0.021	0 to 0.021	0 to 0.027	0 to 0.031	0 to 0.031	0 to 0.039.
Emissions Reductions for PTACs and PTHPs *							
CO_2 (Mt)	0.49	0.81	1.05	1.06	1.09	1.68	2.34.
NO_X (kt)	0.04 to 0.94	0.07 to 1.64	0.08 to 2.02	0.09 to 2.13	0.09 to 2.25	0.13 to 3.17	0.18 to 4.34.
Hg (t)	0 to 0.017	0 to 0.028	0 to 0.037	0 to 0.037	0 to 0.038	0 to 0.059	0 to 0.082.

* Negative values indicate emission increases. Detail may not appear to sum to total due to rounding.

TABLE V.27—SUMMARY OF EMISSIONS REDUCTIONS FOR NON-STANDARD SIZE PTACS AND PTHPS (CUMULATIVE REDUCTIONS FOR EQUIPMENT SOLD FROM 2012 TO 2042)

	Trial standard levels				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Emissions Reductions for PTACs *					
CO_2 (Mt)	0.06	0.06	0.10	0.06	0.16.
NO_X (kt)	0.004 to 0.10	0.004 to 0.10	0.006 to 0.16	0.004 to 0.10	0.010 to 0.24.
Hg (t)	0 to 0.002	0 to 0.002	0 to 0.004	0 to 0.002	0 to 0.005.
Emissions Reductions for PTHPs *					
CO_2 (Mt)	0.06	0.08	0.08	0.14	0.14.
NO_X (kt)	0.005 to 0.13	0.007 to 0.18	0.007 to 0.18	0.012 to 0.30	0.012 to 0.30.
Hg (t)	0 to 0.002	0 to 0.003	0 to 0.003	0 to 0.005	0 to 0.005.
Emissions Reductions for PTACs and PTHPs *					
CO_2 (Mt)	0.12	0.14	0.18	0.20	0.29.
NO_X (kt)	0.009 to 0.23	0.011 to 0.28	0.014 to 0.34	0.016 to 0.40	0.022 to 0.55.
Hg (t)	0 to 0.004	0 to 0.005	0 to 0.006	0 to 0.007	0 to 0.010.

* Negative values indicate emission increases. Detail may not appear to sum to total due to rounding.

The estimated cumulative CO_2, NO_X, and Hg emissions reductions for the amended energy conservation standards range up to a maximum of 2.34 Mt for CO_2, 0.04 to 4.34 kt for NO_X, and 0 to 0.08 t for Hg for standard size PTACs and PTHPs over the period from 2012 to 2042. In the Environmental Assessment (Chapter 16 of the FR TSD), DOE reports estimated annual changes in CO_2, NO_X, and Hg emissions attributable to each TSL. As discussion in section IV.J of this final rule, DOE does not report SO_2 emissions reduction from power plants because reductions from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the emissions caps for SO_2.

The NEMS–BT modeling assumed that NOX would be subject to the Clean Air Interstate Rule (CAIR) issued by the U.S. Environmental Protection Agency on March 10, 2005.[16] 70 FR 25162 (May 12, 2005). On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *North Carolina* v. *Environmental Protection Agency,*[17] in which the court vacated the CAIR. 531 F.3d 896 (D.C. Cir. 2008). If left in place, the CAIR would have permanently capped emissions of NO_X in 28 eastern States and the District of Columbia. As with the SO_2 emissions cap, a cap on NO_X emissions would have meant that energy conservation standards are not likely to have a physical effect on NO_X emissions in States covered by the CAIR caps. While the caps would have meant that physical emissions reductions in those States would not have resulted from the energy conservation standards that DOE is amending today, the standards might have produced an environmental-related economic impact in the form of lower prices for emissions allowance credits, if large enough. DOE notes that the estimated total reduction in NO_X emissions, including projected emissions or corresponding allowance credits in States covered by the CAIR cap was insignificant and too small to affect allowance prices for NO_X under the CAIR.

Even though the D.C. Circuit vacated the CAIR, DOE notes that the D.C. Circuit left intact EPA's 1998 NO_X SIP Call rule, which capped seasonal (summer) NO_X emissions from electric generating units and other sources in 23 jurisdictions and gave those jurisdictions the option to participate in a cap and trade program for those emissions. 63 FR 57356, 57359 (Oct. 27, 1998).[18] DOE notes that the SIP Call rule may provide a similar, although smaller in extent, regional cap and may limit actual reduction in NO_X emissions from revised standards occurring in States participating in the SIP Call rule. However, the possibility that the SIP Call rule may have the same effect as CAIR is highly uncertain. Therefore, DOE established a range of NO_X reductions due to the standards being amended in today's final rule. DOE's low estimate was based on the emission rate of the cleanest new natural gas combined-cycle power plant available for electricity generated based on the assumption that energy conservation standards would result in only the cleanest available fossil-fueled generation being displaced. DOE used the emission rate, specified in 0.0341t of NO_X emitted per TWh of electricity generated, associated with an advanced natural gas combined-cycle power plant, as specified by NEMS–BT. To estimate the reduction in NO_X emissions, DOE multiplied this emission rate by the reduction in electricity generation due to the amended energy conservation standards considered. DOE's high estimate of 0.843 t of NO_X per TWh was based on the use of a nationwide NO_X emission rate for all electrical generation. Use of such an emission rate assumes that future energy conservation standards would result in displaced electrical generation mix that is equivalent to today's mix of power plants (*i.e.*, future power plants displaced are no cleaner than what are being used currently to generate electricity). In addition, under the high estimate assumption, energy conservation standards would have little to no effect on the generation mix. Based on AEO2008 for a recent year (2006) in which no regulatory or non-regulatory measures were in effect to limit NO_X emissions, DOE multiplied this emission rate by the reduction in electricity generation due to the standards considered. The range in NO_X emission changes calculated under using the low and high estimate scenarios are shown in Table V.26 and Table V.27 by TSL. The range of total NO_X emission reductions is from 0.04 to 4.34 tons for the range of TSLs considered. These changes in NO_X emissions are extremely small, with a range between 0.0001 and 0.009 percent of the national base case emissions forecast by NEMS–BT, depending on the TSL.

As noted above in section IV.J, with regard to Hg emissions, DOE is able to report an estimate of the physical quantity changes in these emissions associated with an energy conservation standard. As opposed to using the NEMS–BT model, DOE established a range of Hg rates to estimate the Hg emissions that could be reduced from standards. DOE's low estimate was based on the assumption that future standards would displace electrical generation from natural gas-fired power plants resulting in an effective emission rate of zero. The low-end emission rate is zero because virtually all Hg emitted from electricity generation is from coal-fired power plants. Based on an emission rate of zero, no emissions would be reduced from energy conservation standards. DOE's high estimate was based on the use of a nationwide mercury emission rate from AEO2008. Because power plant emission rates are a function of local regulation, scrubbers, and the mercury content of coal, it is extremely difficult to come up with a precise high-end emission rate. Therefore, DOE believes the most reasonable estimate is based on the assumption that all displaced coal generation would have been emitting at the average emission rate for coal generation as specified by AEO2008. As noted previously, because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the tons of mercury emitted per TWh of coal-generated electricity. Based on the emission rate for a recent year (2006), DOE derived a high-end emission rate of 0.0255 tons per TWh. To estimate the reduction in mercury emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity due to the standards considered as determined in the utility impact analysis. The estimated changes in Hg

[16] See *http://www.epa.gov/cleanairinterstaterule/*.

[17] Case No. 05–1244, 2008 WL 2698180 at *1 (DC Cir. July 11, 2008).

[18] In the NO_X SIP Call rule, EPA found that sources in the District of Columbia and 22 ''upwind'' states (States) were emitting NO_X (an ozone precursor) at levels that significantly contributed to ''downwind'' states not attaining the ozone NAAQS or at levels that interfered with states in attainment maintaining the ozone NAAQS. In an effort to ensure that ''downwind'' states attain or continue to attain the ozone NAAQS, EPA established a region-wide cap for NO_X emissions from certain large combustion sources and set a NO_X emissions budget for each State. Unlike the cap that CAIR would have established, the NO_X SIP Call Rule's cap only constrains seasonal (summer time) emissions. In order to comply with the NO_X SIP Call Rule, States could elect to participate in the NO_X Budget Trading Program. Under the NO_X Budget Trading Program, each emission source is required to have one allowance for each ton of NO_X emitted during the ozone season. States have flexibility in how they allocate allowances through their State Implementation Plans but States must remain within the EPA-established budget. Emission sources are allowed to buy, sell and bank NO_X allowances as appropriate. It should be noted that, on April 16, 2008, EPA determined that Georgia is no longer subject to the NO_X SIP Call rule. 73 FR 21528 (April 22, 2008).

emissions are shown in Table V.26 and Table V.27 for both the standard and non-standard size PTAC and PTHP equipment for the period from 2012 to 2042. The range of total Hg emission reductions is from 0 to 0.082 tons for the range of TSLs considered. These changes in Hg emissions are extremely small, with a range between 0 and 0.016 percent of the national base case emissions forecast by NEMS–BT, depending on the TSL.

The NEMS–BT model used for today's rulemaking could not be used to estimate Hg emission reductions due to standards as it assumed that Hg emissions would be subject to EPA's Clean Air Mercury Rule [19] (CAMR), which would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010. Similar to SO_2 and NO_X, DOE assumed that under such a system, energy conservation standards would have resulted in no physical effect on these emissions, but might have resulted in an environmental-related economic benefit in the form of a lower price for emissions allowance credits, if large enough. DOE estimated that the change in the Hg emissions from energy conservation standards would not be large enough to influence allowance prices under CAMR.

On February 8, 2008, the D.C. Circuit issued its decision in *New Jersey v. Environmental Protection Agency*, [20] in which the D.C. Circuit, among other actions, vacated the CAMR referenced above. In light of this development and because the NEMS–BT model could not be used to directly calculate the Hg emission reductions, DOE used the current Hg emission rates as discussed above to calculate the reductions in Hg emissions in Table V.26 and Table V.27.

In the NOPR, DOE stated that it was considering taking into account a monetary benefit of CO_2 emission reductions associated with this rulemaking. To put the potential monetary benefits from reduced CO_2 emissions into a form that is likely to be most useful to decisionmakers and stakeholders, DOE used the same methods used to calculate the net present value of consumer cost savings: The estimated year-by-year reductions in CO_2 emissions were converted into monetary values and these resulting annual values were then discounted over the life of the affected appliances to the present using both 3 percent and 7 percent discount rates.

In the NOPR, DOE proposed to use the range $0 to $14 per ton. These estimates were based on an assumption of no benefit to an average benefit value reported by the IPCC.[21] It is important to note that the IPCC estimate used as the upper bound value was derived from an estimate of the mean value of worldwide impacts from potential climate impacts caused by CO_2 emissions, and not just the effects likely to occur within the United States. As DOE considers a monetary value for CO_2 emission reductions, the value should be restricted to a representation of those costs/benefits likely to be experienced in the United States. As DOE also explained in the NOPR, it expects that such values would be lower than comparable global values, however, there currently are no consensus estimates for the U.S. benefits likely to result from CO_2 emission reductions. However, DOE believes it is appropriate to use U.S. benefit values, where available, and not world benefit values, in its analysis.[22] Because U.S. specific estimates are not available, and DOE did not receive any additional information that would help serve to narrow the proposed range as a representative range for domestic U.S. benefits, DOE believes it is appropriate to use the global mean value as an appropriate upper bound U.S. value for purposes of sensitivity analysis.

DOE received several comments in response to the proposed estimated value of CO_2 emissions reductions. EarthJustice questioned both the upper and lower bounds of DOE's range of estimated CO_2 values, both of which EarthJustice argued were too low. EarthJustice also stated that it would be inappropriate to limit the consideration to the value of CO_2 to a domestic value. EarthJustice and the joint comment from ACEE and the Natural Resource Defense Council recommended that DOE consider relying on the estimate used in DOE's analysis of the America's Climate Security Bill of 2007 (S. 2191).[23] AHRI commented that DOE should not rely on the IPCC study or values under the European Union ''cap and trade'' program, but instead should consider a monetary value for CO_2 only once a U.S. ''cap and trade'' program has been established, stressing that DOE should consider only the domestic value of CO_2 emissions.

Given the uncertainty surrounding estimates of the SCC, relying on any single study may be inadvisable since its estimate of the SCC will depend on many assumptions made by its authors. The Working Group II's contribution to the Fourth Assessment Report of the IPCC notes that:

> The large ranges of SCC are due in the large part to differences in assumptions regarding climate sensitivity, response lags, the treatment of risk and equity, economic and non-economic impacts, the inclusion of potentially catastrophic losses, and discount rates.[24]

Because of this uncertainty, DOE relied on Tol (2005), which was presented in the IPCC's Fourth Assessment Report, and was a comprehensive meta-analysis of estimates for the value of SCC. Commenters did not provide a rationale for why it would be more accurate or reliable for DOE to use values based on the limited number of studies they cited. As a result, DOE continues to rely on the Tol study reported by the IPCC as the basis for its analysis.

DOE continues to believe that the most appropriate monetary values for consideration in the development of efficiency standards are those drawn from studies that attempt to estimate the present value of the marginal economic benefits likely to result from reducing greenhouse gas emissions, rather than estimates that are based on the market

[19] 70 FR 28606 (May 18, 2005).

[20] No. 05–1097, 2008 WL 341338, at * (DC Cir. Feb. 9, 2008),

[21] During the preparation of its most recent review of the state of climate science, the Intergovernmental Panel on Climate Change (IPCC) identified various estimates of the present value of reducing carbon-dioxide emissions by one ton over the life that these emissions would remain in the atmosphere. The estimates reviewed by the IPCC spanned a range of values. In the absence of a consensus on any single estimate of the monetary value of CO_2 emissions, DOE used the estimates identified by the study cited in Summary for Policymakers prepared by Working Group II of the IPCC's Fourth Assessment Report to estimate the potential monetary value of CO_2 reductions likely to result from standards finalized in this rulemaking. According to IPCC, the mean social cost of carbon (SCC) reported in studies published in peer-reviewed journals was $43 per ton of carbon. This translates into about $12 per ton of carbon dioxide. The literature review (Tol 2005) from which this mean was derived did not report the year in which these dollars were denominated. However, we understand this estimate was denominated in 1995 dollars. Updating that estimate to 2007 dollars yields a SCC of $15 per ton of carbon dioxide.

[22] In contrast, most of the estimates of costs and benefits of increasing the efficiency of PTACs and PTHPs include only economic values of impacts that would be experienced in the U.S. For example, in determining impacts on manufacturers, DOE generally does not consider impacts that occur solely outside of the United States.

[23] EarthJustice, ACEEE, and the Natural Resource Defense Council noted that the analysis of the America's Climate Security Bill of 2007, used a value of $17 per ton of CO_2 with a 7.4 percent annual growth rate. EarthJustice also cited a study by the United Kingdom's Department for Environment, Food, and Rural Affairs, which recommended valuing carbon emissions at just over $25 per ton of CO_2.

[24] *Climate Change 2007—Impacts, Adaption and Vulnerability Contribution* of Working Group II to the Fourth Assessment Report of the IPCC, 17. Available at *http://www.ipcc-wg2.org* (last accessed Aug. 7, 2008).

value of emission allowances under existing cap and trade programs or estimates that are based on the cost of reducing emissions—both of which are largely determined by policy decisions that set the timing and extent of emission reductions and do not necessarily reflect the benefit of reductions. DOE also believes that the studies it relies upon generally should be studies that were the subject of a peer review process and were published in reputable journals.

In today's final rule, DOE is essentially relying on the range of values proposed in the NOPR, which was based on the values presented in Tol (2005), as proposed. However, DOE notes that in the proposed rule, DOE mistakenly assumed that the values presented in Tol (2005) were in 2000 dollars. In actuality, the values in Tol (2005) were indicated to be approximately 1995 values in 1995 dollars. Had DOE, at the NOPR stage, applied the correct dollar year of the values presented in Tol (2005), DOE would have proposed the range of $0 to $15 in the NOPR. Additionally, DOE has applied an annual growth rate of 2.4% to the value of SCC, as suggested by the IPCC Working Group II (2007, p. 822), based on estimated increases in damages from future emissions reported in published studies. As a result, for today's final rule, DOE is assigning a range for the SCC of $0 to $20 ($2007) per ton of CO_2 emissions.

EarthJustice questioned the use of the median estimated social cost of CO_2 as an upper bound of the range. However, the upper bound of the range used by DOE is based on Tol (2005), which reviewed 103 estimates of the SCC from 28 published studies, and concluded that when only peer-reviewed studies published in recognized journals are considered, ''that climate change impacts may be very uncertain but [it] is unlikely that the marginal damage costs of carbon dioxide emissions exceed $50 per ton carbon [comparable to a 2007 value of $20 per ton carbon dioxide when expressed in 2007 U.S. dollars with a 2.4% growth rate.]''

EarthJustice also questioned the use of $0 as the lower bound of DOE's estimated range. In setting a lower bound, DOE agrees with the IPCC Working Group II (2007) report that ''significant warming across the globe and the locations of significant observed changes in many systems consistent with warming is very unlikely to be due solely to natural variability of temperatures or natural variability of the systems'' (pp. 9), and thus tentatively concludes that a *global* value of zero for reducing emissions cannot be justified. However, DOE also believes that it is reasonable to allow for the possibility that the U.S. portion of the global cost of carbon dioxide emissions may be quite low. In fact, some of the studies looked at in Tol (2005) reported negative values for the SCC. As stated in the NOPR, DOE is using U.S. benefit values, and not world benefit values, in its analysis and, further, DOE believes that U.S. domestic values will be lower than the global values. Additionally, the statutory criteria in EPCA do not require consideration of global effects. Therefore, DOE is using a lower bound of $0 per ton of CO_2 emissions in estimating the potential benefits of today's final rule.

The resulting estimates of the potential range of net present value benefits associated with the reduction of CO_2 emissions are reflected in Table V.28.

TABLE V.28—ESTIMATES OF SAVINGS FROM CO_2 EMISSIONS REDUCTIONS UNDER PTAC AND PTHP TRIAL STANDARD LEVELS AT 7% DISCOUNT RATE AND 3% DISCOUNT RATE

	Estimated cumulative CO_2 (Mt) emission reductions	Value of estimated CO_2 emission reductions (million 2007$) at 7% discount rate	Value of estimated CO_2 emission reductions (million 2007$) at 3% discount rate
Standard Size TSL:			
1	0.49	$0 to $4.8	$0 to $9.0.
2	0.81	$0 to $8.0	$0 to $14.9.
3	1.05	$0 to $10.4	$0 to $19.4.
A	1.06	$0 to $10.5	$0 to $19.5.
4	1.09	$0 to $10.8	$0 to $20.0.
5	1.68	$0 to $16.5	$0 to $30.9.
6	2.34	$0 to $22.9	$0 to $43.0.
Non-Standard Size TSL:			
1	0.12	$0 to $1.2	$0 to $2.2.
2	0.14	$0 to $1.4	$0 to $2.7.
3	0.18	$0 to $1.8	$0 to $3.4.
4	0.20	$0 to $2.0	$0 to $3.7.
5	0.29	$0 to $2.9	$0 to $5.4.

DOE also investigated the potential monetary impact resulting from the impact of today's energy conservation standards on SO_2, NO_X, and Hg emissions. As previously stated, DOE's initial analysis assumed the presence of nationwide emission caps on SO_2 and Hg, and caps on NO_X emissions in the 28 States covered by the CAIR caps. In the presence of these caps, DOE concluded that no physical reductions in power sector emissions would occur, but that the lower generation requirements associated with energy conservation standards could potentially put downward pressure on the prices of emissions allowances in cap-and-trade markets. Estimating this effect is very difficult because of the factors such as credit banking, which can change the trajectory of prices. DOE has further concluded that the effect from energy conservation standards on SO_2 allowance prices is likely to be negligible, based upon runs of the NEMS–BT model. See Chapter 16 (Environmental Assessment) of the FR TSD for further details.

As discussed earlier, with respect to NO_X the CAIR rule has been vacated by the courts, so projected annual NO_X allowances from NEMS–BT are no longer relevant. In DOE's subsequent analysis, NO_X emissions are not controlled by a nationwide regulatory system. For the range of NO_X reduction estimates (and Hg reduction estimates), DOE estimated the national monetized benefits of emissions reductions from today's rule based on environmental damage estimates from the literature. Available estimates suggest a very wide

range of monetary values for NO_X emissions, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001 dollars [25] or a range of $432 per ton to $4,441 per ton in 2007 dollars.

DOE has already conducted research for today's final rule and determined that the basic science linking mercury emissions from power plants to impacts on humans is considered highly uncertain. However, DOE identified two estimates of the environmental damages of mercury based on two estimates of the adverse impact of childhood exposure to methyl mercury on IQ for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high end estimate is based on an estimate of the current aggregate cost of the loss of IQ in American children that results from exposure to mercury of U.S. power plant origin ($1.3 billion per year in year 2000$), which works out to $32.6 million per ton emitted per year (2007$).[26] The low-end estimate was $664,000 per ton emitted in 2004$ or $729,000 per ton in 2007$), which DOE derived from a published evaluation of mercury control using different methods and assumptions from the first study, but also based on the present value of the lifetime earnings of children exposed.[27] The resulting estimates of the potential range of the present value benefits associated with the national reduction of NO_X and national reductions in Hg emissions are reflected in Table V.29 and Table V.30.

TABLE V.29—ESTIMATES OF SAVINGS FROM REDUCTIONS OF NO_X AND HG UNDER PTAC AND PTHP TRIAL STANDARD LEVELS AT A 7% DISCOUNT RATE

	Estimated cumulative NO_X (kt) emission reductions *	Value of estimated NO_X emission reductions (thousand 2007$)	Estimated cumulative Hg (tons) emission reductions*	Value of estimated Hg emission reductions (thousand 2007$)
Standard Size TSL:				
1	0.04 to 0.94	$4 to $1,091	0 to 0.017	$0 to $182.
2	0.07 to 1.64	$7 to $1,892	0 to 0.028	$0 to $299.
3	0.08 to 2.02	$9 to $2,335	0 to 0.037	$0 to $392.
A	0.09 to 2.13	$10 to $2,462	0 to 0.037	$0 to $393.
4	0.09 to 2.25	$10 to $2,599	0 to 0.038	$0 to $403.
5	0.13 to 3.17	$14 to $3,658	0 to 0.059	$0 to $624.
6	0.18 to 4.34	$20 to $5,014	0 to 0.082	$0 to $871.
Non-Standard Size TSL:				
1	0.01 to 0.23	$1 to $263	0 to 0.004	$0 to $45.
2	0.01 to 0.28	$1 to $319	0 to 0.005	$0 to $54.
3	0.01 to 0.34	$2 to $390	0 to 0.006	$0 to $69.
4	0.02 to 0.40	$2 to $463	0 to 0.007	$0 to $75.
5	0.02 to 0.55	$2 to $631	0 to 0.010	$0 to $110.

* Values in Table V.32 may not appear to sum to the cumulative values in Table V.26 due to rounding.

TABLE V.30—ESTIMATES OF SAVINGS FROM REDUCTIONS OF NO_X AND HG UNDER PTAC AND PTHP TRIAL STANDARD LEVELS AT A 3% DISCOUNT RATE

	Estimated cumulative NO_X (kt) emission reductions *	Value of estimated NO_X emission reductions (thousand 2007$)	Estimated cumulative Hg (tons) emission reductions *	Value of estimated Hg emission reductions (thousand 2007$)
Standard Size TSL:				
1	0.04 to 0.94	$9 to $2,250	0 to 0.017	$0 to $331.
2	0.07 to 1.64	$15 to $3,903	0 to 0.028	$0 to $544.
3	0.08 to 2.02	$19 to $4,815	0 to 0.037	$0 to $712
A	0.09 to 2.13	$20 to $5,079	0 to 0.037	$0 to $714.
4	0.09 to 2.25	$21 to $5,362	0 to 0.038	$0 to $732.
5	0.13 to 3.17	$30 to $7,545	0 to 0.059	$0 to $1,135.
6	0.18 to 4.34	$41 to $10,341	0 to 0.082	$0 to $1,582.
Non-Standard Size TSL:				
1	0.01 to 0.23	$2 to $542	0 to 0.004	$0 to $83.
2	0.01 to 0.28	$3 to $659	0 to 0.005	$0 to $98.
3	0.01 to 0.34	$3 to $805	0 to 0.006	$0 to $125.
4	0.02 to 0.40	$4 to $954	0 to 0.007	$0 to $136.
5	0.02 to 0.55	$5 to $1,301	0 to 0.010	$0 to $200.

* Values in Table V.33 may not appear to sum to the cumulative values in Table V.26 due to rounding.

[25] 2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities. Office of Management and Budget Office of Information and Regulatory Affairs, Washington, DC.

[26] Trasande, L., *et al.*, ''Applying Cost Analyses to Drive Policy that Protects Children'' 1076 ANN. N.Y. ACAD. SCI. 911 (2006).

[27] Ted Gayer and Robert Hahn, Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions, Regulatory Analysis 05–01. AEI-Brookings Joint Center For Regulatory Studies, Washington, DC, 31 pp., 2004. A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study.

7. Other Factors

In developing today's standards, the Secretary took into consideration: (1) The impacts of setting different amended standards for PTACs and PTHPs; (2) the potential that amended standards could cause equipment switching (i.e., purchase of PTACs instead of PTHPs) and the effects of any such switching; (3) the uncertainties associated with the impending phaseout in 2010 of R–22 refrigerant; and (4) the impact of amended standards on the manufacturers of and market for non-standard size packaged terminal equipment (e.g., impacts on small businesses). To address the impact of setting different amended energy conservation standards for PTACs and PTHPs and the potential that amended energy conservation standards could cause equipment switching, DOE conducted a sensitivity analysis. The results of the sensitivity analysis are shown in section V.B. DOE discusses the uncertainties associated with the impending refrigerant phaseout in 2010 of R–22 refrigerant and the impact of amended energy conservation standards on the non-standard size industry in the conclusion section below.

D. Conclusion

EPCA contains criteria for prescribing new or amended energy conservation standards. For commercial HVAC and water heating equipment such as PTACs and PTHPs, DOE must adopt as national standards the levels in amendments to ASHRAE Standard 90.1 unless DOE determines, ''supported by clear and convincing evidence,'' that standards more stringent than those levels ''would result in significant additional conservation of energy and [be] technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(ii)(II)) Any more stringent standard must be designed to achieve the maximum improvement in energy efficiency and be technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) Moreover, in determining whether an energy conservation standard is economically justified, DOE must weigh all seven factors specified in EPCA, and set forth above, to determine whether the benefits of the standard exceed its costs. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i))

In this rulemaking, DOE has evaluated whether standards more stringent than the efficiency levels in ASHRAE Standard 90.1–1999 for PTACs and PTHPs are justified under the above criteria. As stated in sections III.B.1 and C, DOE determined, based on clear and convincing evidence, that all of the more stringent standard levels considered in this rulemaking are technologically feasible and would save significant additional amounts of energy. To determine if these more stringent TSLs are economically justified, DOE compared the maximum technologically feasible levels with the base case, and determined whether those levels are economically justified. Upon finding the maximum technologically feasible levels not to be justified, DOE analyzed the next lower TSL to determine whether that level was economically justified. DOE repeated this procedure until it identified a TSL that was economically justified.

In the NOPR, DOE weighed the benefits and burdens for standard size and non-standard size PTACs and PTHPs through TSL 1 through 7. In response to both the uniqueness of the two separate industries and comments from interested parties on the potential impacts of standards on the standard size and non-standard size equipment, DOE weighed the benefits and burdens separately in today's final rule.

In addition to the quantitative results, DOE also considered other factors that might affect economic justification. DOE took into consideration the EPA-mandated refrigerant phaseout and its effect on PTAC and PTHP equipment efficiency, which concern both standard size and non-standard size PTACs and PTHPs. In addition, DOE considered the uniqueness of the PTAC and PTHP industry with its substantial number of manufacturers of non-standard size equipment. In particular, DOE considered the declining shipments of non-standard size equipment, the small size segment of the industry (both relative to the rest of the PTAC and PTHP industry and in absolute terms), and the small businesses that could be affected by amended energy conservation standards.

1. Standard Size PTACs and PTHPs

Table V.31 summarizes DOE's quantitative analysis results for each TSL it considered for standard size PTACs and PTHPs in this final rule. This table presents the results or, in some cases a range of results, for each TSL, and will aid the reader in the discussion of costs and benefits of each TSL. The range of values for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

TABLE V.31—SUMMARY OF RESULTS FOR STANDARD SIZE PTACS AND PTHPS BASED UPON THE AEO2008 ENERGY PRICE FORECAST *

	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6
Primary energy saved (quads)	0.015	0.024	0.031	0.032	0.033	0.049	0.068
7% Discount rate (Standard Size)	0.003	0.006	0.007	0.007	0.008	0.011	0.015
3% Discount rate (Standard Size)	0.007	0.012	0.016	0.016	0.017	0.025	0.035
Generation capacity reduction (GW) (Standard Size) **	(0.040)	(0.062)	(0.086)	(0.082)	(0.082)	(0.139)	(0.196)
NPV (2007$ million) (Standard Size):							
7% Discount rate	1	8	2	10	6	(11)	(41)
3% Discount rate	17	43	38	54	49	31	(10)
Industry impacts (Standard Size):							
Industry NPV (2007$ million)	(3)–(28)	(6)–(45)	(3)–(60)	(8)–(61)	(8)–(68)	(1)–(103)	(4)–(164)
Industry NPV (% Change)	(0.8)–(7)	(1)–(11)	(0.8)–(14)	(2)–(14)	(2)–(16)	(0.2)–(24)	(0.9)–(38)

TABLE V.31—SUMMARY OF RESULTS FOR STANDARD SIZE PTACS AND PTHPS BASED UPON THE AEO2008 ENERGY PRICE FORECAST *—Continued

	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6
Cumulative emissions impacts (Standard Size) †:							
CO_2 (Mt)	(0.49)	(0.81)	(1.05)	(1.06)	(1.09)	(1.68)	(2.34)
NO_X (kt)	(0.04)–(0.94)	(0.07)–(1.64)	(0.08)–(2.02)	(0.09)–(2.13)	(0.09)–(2.25)	(0.13)–(3.17)	(0.18)–(4.34)
Hg (t)	0–(0.017)	0–(0.028)	0–(0.037)	0–(0.037)	0–(0.038)	0–(0.059)	0–(0.082)
Employment Impacts (Standard Size):							
Indirect Employment Impacts	41	70	87	91	96	138	190
Direct, Domestic Employment Impacts	1	2	3	3	3	6	9
Mean LCC savings (2007$) (Standard Size) *:							
Standard Size PTAC, 9,000 Btu/h	(1)	(1)	(3)	(3)	(1)	(6)	(10)
Standard Size PTHP, 9,000 Btu/h	11	20	20	28	28	28	24
Standard Size PTAC, 12,000 Btu/h	(2)	(2)	(5)	(2)	(2)	(10)	(15)
Standard Size PTHP, 12,000 Btu/h	13	24	24	24	20	20	14
Mean PBP (years) (Standard Size):							
Standard Size PTAC, 9,000 Btu/h	13.0	13.0	13.7	13.7	13.0	14.5	15.2
Standard Size PTHP, 9,000 Btu/h	5.1	4.5	4.5	4.4	4.4	4.4	5.1
Standard Size PTAC, 12,000 Btu/h	13.1	13.1	14.0	13.1	13.1	14.9	15.9
Standard Size PTHP, 12,000 Btu/h	5.1	4.6	4.6	4.6	5.5	5.5	6.4
LCC Results (Standard Size):							
Standard Size PTAC, 9,000 Btu/h.							
Net Cost (%)	15%	15%	30%	30%	15%	46%	62%
No Impact (%)	77%	77%	56%	56%	77%	37%	18%
Net Benefit (%)	7%	7%	14%	14%	7%	17%	21%
Standard Size PTHP, 9,000 Btu/h.							
Net Cost (%)	7%	10%	10%	13%	13%	13%	24%
No Impact (%)	78%	57%	57%	37%	37%	37%	18%
Net Benefit (%)	16%	33%	33%	50%	50%	50%	58%
Standard Size PTAC, 12,000 Btu/h.							
Net Cost (%)	16%	16%	31%	16%	16%	48%	65%
No Impact (%)	77%	77%	56%	77%	77%	36%	18%
Net Benefit (%)	7%	7%	13%	7%	7%	16%	17%
Standard Size PTHP, 12,000 Btu/h.							
Net Cost (%)	7%	10%	10%	10%	21%	21%	35%
No Impact (%)	77%	57%	57%	57%	37%	37%	18%

TABLE V.31—SUMMARY OF RESULTS FOR STANDARD SIZE PTACS AND PTHPS BASED UPON THE AEO2008 ENERGY PRICE FORECAST *—Continued

	TSL 1	TSL 2	TSL 3	TSL A	TSL 4	TSL 5	TSL 6
Net Benefit (%)	16%	33%	33%	33%	42%	42%	47%

* Parentheses indicate negative values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Change in installed generation capacity by the year 2042 based on AEO 2008 Reference Case.
† CO_2 emissions impacts are physical reductions from all sources. NO_X and Hg emissions impacts are physical reductions at power plants.

First, DOE considered TSL 6, the max-tech efficiency level for standard size PTACs and PTHPs. TSL 6 would likely save 0.068 quads of energy through 2042 for standard size PTACs and PTHPs, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.015 quads. For the Nation as a whole, DOE projects that TSL 6 would result in a net decrease of $41 million in NPV for standard size PTACs and PTHPs, using a discount rate of seven percent and a net decrease of $10 million for standard size PTACs and PTHPs, using a discount rate of three percent. The emissions reductions at TSL 6 for standard size PTACs and PTHPs are 2.34 Mt of CO_2, between 0.18 kt and 4.34 kt of NO_X, and between zero and 0.082 t of Hg. Total generating capacity needed in 2042 is estimated to decrease compared to the reference case by 0.196 gigawatts (GW) under TSL 6.

At TSL 6, DOE projects that the average PTAC customer will experience an increase in LCC for all standard size equipment classes. Purchasers of standard size PTACs are projected to lose on average −$12 (2007$) over the life of the product, and purchasers of standard size PTHPs would save on average $20 (2007$). DOE estimates LCC increases for 63 percent of customers in the Nation who purchase a standard size PTAC, and for 29 percent of customers in the Nation who purchase a standard size PTHP. The mean payback period of each standard size PTAC equipment class at TSL 6 is projected to be substantially longer than the mean lifetime of the equipment.

The projected change in the standard size industry value (INPV) ranges from a decrease of $4 million to a decrease of $164 million, in 2007$. For standard size PTACs and PTHPs, the impacts are driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. Currently, there are equipment lines being manufactured with efficiency levels above TSL 6 utilizing R–22 refrigerant. Using the degradations estimated in the engineering analysis, DOE believes standard size equipment could be produced at TSL 6 in the lower range of cooling capacities. DOE believes manufacturers would not be able to manufacture standard size PTACs and PTHPs at TSL 6 at the high range of the cooling capacities (e.g., 15,000 Btu/h) within a given equipment class (i.e., standard size PTACs with a cooling capacity greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h). DOE has not initially been able to identify technologies and design approaches for R–410A units to meet these higher levels in the absence of the availability of high efficiency compressors spanning the full range of cooling capacities. At TSL 6, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 6 could result in a net loss of 38.3 percent in INPV to the standard size PTAC and PTHP industry.

After carefully considering the analysis and weighing the benefits and burdens of TSL 6, the Secretary has concluded that at TSL 6, even if manufacturers could overcome the barriers to produce R–410 equipment in the full range of cooling capacities by the effective date of an amended energy conservation standard, the benefits of energy savings and emissions reductions would be outweighed by the potential multi-million dollar negative net economic cost to the Nation, the economic burden on consumers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers.

Next, DOE considered TSL 5. Primary energy savings is estimated at 0.049 quads of energy through 2042 for standard size PTACs and PTHPs, which DOE considers significant. Discounted at seven percent, the energy savings through 2042 would be 0.011 quads. For the Nation as a whole, DOE projects that TSL 5 would result in a net decrease of $11 million in NPV for standard size PTACs and PTHPs, using a discount rate of seven percent and an increase of $31 million for standard size PTACs and PTHPs, using a discount rate of three percent. The emissions reductions are projected to be 1.68 Mt of CO_2, between 0.013 kt and 3.17 kt of NO_X and between 0 and 0.082 t of Hg. Total generating capacity needed in 2042 under TSL 5 is estimated to decrease by 0.139 GW for standard size PTACs and PTHPs.

At TSL 5, DOE found the impacts of amended energy conservation standards on customers of PTACs would likely differ significantly from their impacts on PTHP customers. While only 16 percent of customers of standard size PTHPs would likely have an LCC increase at TSL 5, 47 percent of customers of standard size PTACs would experience an LCC increase at this TSL. A customer for a standard size PTAC, on average, would experience an increase in LCC of $8, while the customer for a standard size PTHP, on average, would experience a decrease in LCC of $25. At TSL 5, DOE projects that the average PTAC customer for a standard size PTAC will experience an increase in LCC in each equipment class. In addition, the mean payback period of each standard size PTAC equipment class at TSL 5 is projected to be substantially longer than the mean lifetime.

At TSL 5, the projected change in INPV ranges between losses of $1 million and $103 million. For manufacturers of standard size equipment alone, DOE estimated a decrease in the INPV to range from 0.2 percent to 24.0 percent. The magnitude of projected impacts is still largely determined, however, by the manufacturers' ability to pass on larger increases in MPC to the customer. Thus, the potential INPV decrease of $103 million assumes that DOE's projections of partial cost recovery as described in Chapter 13 of the TSD remain valid. In addition, at TSL 5 the impending refrigerant phaseout could also have a significant impact on manufacturers. Currently, both standard size PTACs and PTHPs using R–22 refrigerant are available on the market at and above TSL 5 efficiency levels. However, at the performance degradations that DOE estimated in the engineering analysis for R–410A equipment, manufacturers would be unable to produce R–410A equipment at these levels unless high

efficiency R–410A compressors become available. The absence of such compressors would likely mean that the negative financial impacts of TSL 5 would be greater than characterized by DOE's MIA analysis. Even though the ability of manufacturers to produce equipment utilizing R–410A is greater at TSL 5 than at TSL 6, DOE anticipates that manufacturers would not be able to produce standard size PTACs and PTHPs at TSL 5 in the full range of capacities available today due to the physical size constraints imposed by the wall sleeve dimensions.

While DOE recognizes the increased economic benefits to the nation that could result from TSL 5 for standard size PTACs and PTHPs, DOE concludes that the benefits of a Federal standard at TSL 5 would still be outweighed by the economic burden that would be placed upon PTAC customers. In addition, DOE believes at TSL 5, the benefits of energy savings and emissions impacts would be outweighed by the large impacts on standard size manufacturers' INPV. Finally, DOE is concerned that standard size manufacturers may be unable to offer the full capacity range of equipment utilizing R–410A by the effective date of the amended energy conservation standards.

Next, DOE considered TSL 4. For TSL 4, DOE combined the efficiency levels in TSL 1 for PTACs and the efficiency levels in TSL 5 for PTHPs. This combination of efficiency levels serves to maximize LCC savings, while recognizing the differences in LCC results for standard size PTACs and PTHPs. DOE projects that TSL 4 for standard size PTACs and PTHPs would save 0.033 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.008 quads. For the Nation as a whole, DOE projects that TSL 4 would result in net savings in NPV of $6 million for standard size PTACs and PTHPs, using a discount rate of seven percent, and $49 million for standard size PTACs and PTHPs, using a discount rate of three percent. The estimated emissions reductions are 1.09 Mt of CO_2, between 0.09 kt and 2.25 kt of NO_X, and between 0 and 0.038 t of Hg. Total generating capacity needed in 2042 under TSL 4 would likely decrease by 0.082 GW.

At TSL 4, DOE projects that the average PTAC or PTHP customer would experience LCC savings. Purchasers of standard size PTACs, on average, have LCC increase of $2 (2007$) over the life of the product and purchasers of PTHPs would save on average $25 (2007$). DOE estimates an LCC increase for 15 percent of customers in the Nation who purchase a standard size PTAC, and for 16 percent of customers in the Nation who purchase a standard size PTHP. For standard size PTACs and PTHPs, the remainder of customers would experience either a decrease or no change in LCC. DOE also projects that the mean payback period of each standard size PTAC equipment class at TSL 4 would be substantially longer than the mean lifetime of the equipment.

The projected change in INPV ranges between a loss of $8 million and a loss of $68 million for the standard size PTAC and PTHP industry. Just as with TSLs 5 and 6, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. The loss of $68 million assumes DOE's projections of partial cost recovery as described in Chapter 13 of the TSD. TSL 4 requires the production of standard size PTACs at the efficiency levels in TSL 1 and standard size PTHPs at efficiency levels at TSL 5. For the larger cooling capacity range (*e.g.*, 15,000 Btu/h) of standard size PTACs with cooling capacities greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h, DOE believes manufacturers would not be able to produce equipment in a given equipment class at the EER required by the TSL 4 energy-efficiency equation. Specifically, DOE is concerned that standard size manufacturers would be forced to eliminate larger cooling capacity equipment due to the stringency of the standard in the higher cooling capacity regions.

While DOE recognizes the increased economic benefits to the nation that could result from TSL 4 for standard size PTACs and PTHPs, DOE concludes that the benefits of a Federal standard at TSL 4 would still be outweighed by the economic burden that would be placed upon PTAC customers. In addition, DOE believes at TSL 4, the benefits of energy savings and emissions impacts would be outweighed by the large impacts on standard size manufacturers' INPV. Finally, DOE is concerned that standard size manufacturers may be unable to offer the full capacity range of equipment utilizing R–410A by the effective date of the amended energy conservation standards.

Next, DOE considered TSL A. TSL A is a modified version of TSL 3 and TSL 4 DOE used for the final rule. To generate the efficiency analyzed in TSL A for standard size equipment, DOE further investigated the slope of the energy-efficiency equation as discussed in section IV.C. DOE adjusted the slope of the energy-efficiency equation to make the curve steeper. In other words, DOE adjusted the energy-efficiency to require more stringent efficiency levels for lower cooling capacities, where manufacturers have more physical space inside the box sleeve to make efficiency improvements, while lessening the stringency for higher cooling capacities, where manufacturers are already using most of the physical space inside the box sleeve for capacity increases, leaving little room for efficiency improvements. For TSL A, DOE combined the efficiency levels in TSL 3 and TSL 1 for standard size PTACs depending on cooling capacity. For TSL A, DOE combined the efficiency levels in TSL 5 and TSL 3 for standard size PTHPs depending on cooling capacity. This combination of efficiency levels serves to maximize LCC savings, while recognizing the differences in LCC results for standard size PTACs and PTHPs and the differences in the energy efficiency potentials between the various cooling capacities of standard size equipment. (See Chapter 9 of the TSD for further explanation and a graphical representation of the energy-efficiency equations.)

DOE projects that TSL A for standard size PTACs and PTHPs would save 0.032 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.007 quads. For the Nation as a whole, DOE projects that TSL A would result in net savings in NPV of $10 million for standard size PTACs and PTHPs, using a discount rate of seven percent, and $54 million for standard size PTACs and PTHPs, using a discount rate of three percent. The estimated emissions reductions are 1.06 Mt of CO_2, between 0.09 kt and 2.13 kt of NO_X, and between 0 and 0.037 t of Hg. Total generating capacity needed in 2042 under TSL A would likely decrease by 0.082 GW.

At TSL A, DOE projects that the average PTAC or PTHP customer would experience LCC savings. Purchasers of standard size PTACs, on average, would experience an LCC increase of $3 (2007$) over the life of the product while purchasers of PTHPs would save on average $26 (2007$). DOE estimates LCC savings for 24 percent of customers in the Nation who purchase a standard size PTAC, and for 12 percent of customers in the Nation who purchase a standard size PTHP. For standard size PTACs and PTHPs, the remainder of customers would experience either a decrease or no change in LCC. DOE also projects that the mean payback period of each standard size PTAC equipment

class at TSL A would be substantially longer than the mean lifetime of the equipment.

The projected change in INPV ranges between losses of $8 million and $61 million for the standard size PTAC and PTHP industry at TSL A. Just as with TSL 4, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. However, TSL A requires efficiency levels for standard size PTHPs to be 0.2 EER higher than the efficiency levels for PTACs. DOE believes bringing these efficiency levels closer together will ultimately aid manufacturers in using one equipment platform to design their standard size PTAC and PTHP equipment offerings. The loss of $61 million assumes the continued validity of DOE's projections of partial cost recovery as described in Chapter 13 of the TSD. For the larger cooling capacity range (*e.g.*, 15,000 Btu/h), DOE believes manufacturers could produce equipment at the EER required by the TSL A energy-efficiency equation utilizing R–410A. Specifically, DOE believes manufacturers would not be forced to eliminate larger cooling capacity equipment since DOE modified the slope of the energy-efficiency equation at TSL A to accommodate the additional concerns regarding the physical constraints at larger cooling capacities.

After considering the analysis and weighing the benefits and the burdens, DOE concludes that the benefits of a TSL A standard outweigh the burdens. In particular, the Secretary concludes that TSL A saves a significant amount of energy and is technologically feasible and economically justified in the full range of cooling capacities for R–410A standard size PTACs and PTHPs. Therefore, DOE adopts the energy conservation standards for standard size PTACs and PTHPs at TSL A, as described by the energy-efficiency equations. Table V.32 sets out the energy conservation standards for standard size PTACs and PTHPs in the full range of cooling capacities that DOE is adopting.

TABLE V.32—FINAL ENERGY CONSERVATION STANDARDS FOR STANDARD SIZE PTACS AND PTHPS

Equipment class			Final energy conservation standards *
Equipment	Category	Cooling capacity	
PTAC	Standard Size **	<7,000	EER = 11.7
		7,000–15,000	EER = 13.8 − (0.300 × Cap †)
		>15,000	EER = 9.3
PTHP	Standard Size **	<7,000	EER = 11.9 COP = 3.3
		7,000–15,000	EER = 14.0 − (0.300 × Cap †) COP = 3.7 − (0.052 × Cap †)
		>15,000	EER = 9.5 COP = 2.9

* For equipment rated according to the DOE test procedure (ARI Standard 310/380–2004), all energy efficiency ratio (EER) values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled equipment and evaporatively-cooled equipment and at 85 °F entering water temperature for water cooled equipment. All coefficient of performance (COP) values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled equipment.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions having an external wall opening greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches.

† Cap means cooling capacity in thousand British thermal units per hour (Btu/h) at 95 °F outdoor dry-bulb temperature.

2. Non-Standard Size PTACs and PTHPs

Table V.33 summarizes DOE's quantitative analysis results for each TSL it considered for non-standard size PTACs and PTHPs in this final rule. This table presents the results or, in some cases a range of results, for each TSL, and will aid the reader in the discussion of costs and benefits of each TSL. The range of values for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

TABLE V.33—SUMMARY OF RESULTS FOR NON-STANDARD SIZE PTACS AND PTHPS BASED UPON THE AEO2008 ENERGY PRICE FORECAST *

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Primary energy saved (quads)	0.004	0.004	0.005	0.006	0.009
7% Discount rate (Non-Standard Size)	0.001	0.001	0.001	0.001	0.002
3% Discount rate (Non-Standard Size)	0.002	0.002	0.003	0.003	0.004
Generation capacity reduction (GW) (Standard Size) **	(0.009)	(0.010)	(0.013)	(0.014)	(0.021)
NPV (2007$million) (Non-Standard Size):					
7% Discount rate	5	6	7	8	10
3% Discount rate	14	16	19	23	29
Industry Impacts (Non-Standard Size):					
Industry NPV (2007$ million)	(16)–(17)	(17)–(19)	(17)–(20)	(21)–(23)	(20)–(24)
Industry NPV (% Change)	(54)–(58)	(58)–(64)	(56)–(65)	(69)–(78)	(65)–(81)
Cumulative Emissions Impacts (Non-Standard Size): †					
CO_2 (Mt)	(0.12)	(0.14)	(0.18)	(0.20)	(0.29)
NO_X (kt)	(0.01)–(0.23)	(0.01)–(0.28)	(0.01)–(0.34)	(0.02)–(0.40)	(0.02)–(0.55)
Hg (t)	0–(0.004)	0–(0.005)	0–(0.006)	0–(0.007)	0–(0.010)
Employment Impacts (Non-Standard Size):					
Indirect Employment Impacts	8	9	12	14	20
Direct, Domestic Employment Impacts	(106)–1	(106)–1	(107)–1	(107)–1	(108)–2
Mean LCC Savings (2007$) (Non-Standard Size): *					

TABLE V.33—SUMMARY OF RESULTS FOR NON-STANDARD SIZE PTACS AND PTHPS BASED UPON THE AEO2008 ENERGY PRICE FORECAST *—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Non-Standard Size PTAC, 11,000 Btu/h	26	26	30	26	31
Non-Standard Size PTHP, 11,000 Btu/h	62	66	66	80	80
Mean PBP (years) (Standard Size):					
Non-Standard Size PTAC, 11,000 Btu/h	4.4	4.4	5.1	4.4	5.9
Non-Standard Size PTHP, 11,000 Btu/h	2.2	2.8	2.8	3.0	3.0
LCC Results (Non-Standard Size)					
Non-Standard Size PTAC, 11,000 Btu/h:					
Net Cost (%)	6	6	14	6	25
No Impact (%)	73	73	47	73	23
Net Benefit (%)	22	22	39	22	52
Non-Standard Size PTHP, 11,000 Btu/h:					
Net Cost (%)	1	3	3	5	5
No Impact (%)	73	47	47	23	23
Net Benefit (%)	27	50	50	72	72

* Parentheses indicate negative values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Change in installed generation capacity by the year 2042 based on AEO2008 Reference Case.
† CO_2 emissions impacts are physical reductions from all sources. NO_X and Hg emissions impacts are physical reductions at power plants.

First, DOE considered TSL 5, the max-tech efficiency level for non-standard size PTACs and PTHPs. TSL 5 would likely save 0.009 quads of energy through 2042 for non-standard size PTACs and PTHPs, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.002 quads. For the Nation as a whole, DOE projects that TSL 5 would result in a net increase of $10 million in NPV for non-standard size PTACs and PTHPs, using a discount rate of seven percent, and $29 million for non-standard size PTACs and PTHPs, using a discount rate of three percent. The emissions reductions at TSL 5 for non-standard size PTACs and PTHPs are 0.29 Mt of CO_2, between 0.02 and 0.55 kt of NO_X, and between 0.0 and 0.01 t of Hg. Total generating capacity needed in 2042 is estimated to decrease compared to the reference case by 0.021 GW under TSL 5 for non-standard size equipment.

At TSL 5, DOE projects that the average PTAC customer will experience a decrease in LCC for all non-standard size equipment classes. Purchasers of non-standard size PTACs are projected to save on average $31 (2007$) over the life of the product and purchasers of non-standard size PTHPs would save on average $80 (2007$). DOE estimates LCC increases for 25 percent of customers in the Nation that purchase a non-standard size PTAC, and for 5 percent of customers in the Nation that purchase a non-standard size PTHP.

The projected change in the non-standard size industry value (INPV) ranges from a decrease of $20 million to a decrease of $24 million, in 2007$. For non-standard size PTACs and PTHPs, the impacts are driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. Currently, there are very few equipment lines being manufactured that have efficiency levels at or above TSL 5 utilizing R–22 refrigerant. Using the degradations estimated in the engineering analysis, DOE believes non-standard size equipment could be produced at TSL 5 in the lower range of cooling capacities. DOE believes manufacturers would not be able to manufacture non-standard size PTACs and PTHPs at TSL 5 at the high range of cooling capacities (*e.g.*, 15,000 Btu/h) within a given equipment class for non-standard size PTACs and PTHPs with cooling capacities greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h. In addition, DOE believes many small manufacturers of non-standard size equipment would be unable to recover the large investments needed to change over all of their existing equipment lines to the efficiency levels required by TSL 5. If some small non-standard manufacturers cannot invest the product and capital conversion costs necessary to comply with TSL 5, they would be forced to abandon their equipment lines and exit the business. Others could be forced to reduce their equipment offerings in order to reduce the magnitude of the investments required to meet TSL 5 efficiency levels for non-standard equipment.

After carefully considering the analysis and weighing the benefits and burdens of TSL 5, the Secretary has reached the following conclusion: At TSL 5, even if manufacturers overcome the barriers to produce R–410 equipment in the full range of cooling capacities by the effective date of an amended energy conservation standard, the benefits of energy savings and emissions reductions would be outweighed by the potential multi-million dollar negative economic burden on manufacturers, the risks of small, non-standard manufacturers exiting from the market, and the reduction of equipment lines resulting from decreased equipment offerings.

Next, DOE considered TSL 4. For TSL 4, DOE combined the efficiency levels in TSL 1 for non-standard size PTACs and the efficiency levels in TSL 5 for non-standard size PTHPs. This combination of efficiency levels serves to maximize LCC savings, while recognizing the differences in LCC results for non-standard size PTACs and PTHPs. DOE projects that TSL 4 for non-standard size PTACs and PTHPs would save 0.006 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.001 quads. For the Nation as a whole, DOE projects that TSL 4 would result in net savings in NPV of $8 million for non-standard size PTACs and PTHPs, using a discount rate of seven percent, and $23 million for non-standard size PTACs and PTHPs, using a discount rate of three percent. The estimated emissions reductions are 0.20 Mt of CO_2, between 0.02 kt and 0.40 kt of NO_X, and between 0 and 0.007 t of Hg. Total generating capacity needed in 2042 under TSL 4 would likely decrease by 0.014 GW.

At TSL 4, DOE projects that the average PTAC or PTHP customer would experience LCC savings. Purchasers of

non-standard size PTACs, on average, would experience an LCC decrease of $26 (2007$) over the life of the product and purchasers of non-standard size PTHPs would save on average $80 (2007$). DOE estimates an LCC increase for 6 percent of customers in the Nation who purchase a non-standard size PTAC, and for 5 percent of customers in the Nation who purchase a non-standard size PTHP. The remaining customers of non-standard size PTACs and PTHPs would experience either a decrease or no change in LCC.

The projected change in INPV ranges between losses of $21 million and $23 million for the non-standard size PTAC and PTHP industry. Just as with TSL 5, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. The loss of $23 million assumes that DOE's projections of partial cost recovery as described in Chapter 13 of the TSD remain valid. TSL 4 requires the production of non-standard size PTACs at the efficiency levels in TSL 1 and non-standard size PTHPs at efficiency levels at TSL 5. Thus, TSL 4 requires the production of non-standard size PTHPs using R–410A that would have efficiencies equivalent to the ''max tech'' efficiency levels with R–410A applying the degradations estimated in the engineering analysis in the absence of a high efficiency compressor. For the larger cooling capacity range (*i.e.*, 15,000 Btu/h) within a given equipment class of non-standard size PTACs and PTHPs with a cooling capacity greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h, DOE believes manufacturers would not be able to produce equipment at the efficiency levels provided by the TSL 4 energy-efficiency equations. At larger cooling capacities for non-standard equipment, manufacturers do not have the additional space within the box sleeve to add heat exchanger area to increase the efficiency of the equipment. Specifically, DOE believes non-standard manufacturers would eliminate equipment due to the stringency of the standard—and the costs associated with attaining them—at higher cooling capacity regions. In addition, DOE believes many small manufacturers of non-standard size equipment would be unable to recover the large investments needed to change over all of their existing equipment lines to the efficiency levels required by TSL 4. If some of these manufacturers cannot invest the product and capital conversion costs necessary to comply with TSL 4, they would be forced to abandon their equipment lines and exit the business. Others could be forced to reduce their equipment offerings in order to reduce the magnitude of the investments required to meet the TSL 4 efficiency levels, which will affect their ability to offer R–410A-compatible equipment in the full range of capacities currently being offered by the time the new standard would become effective.

Based on the reasons stated earlier, while DOE recognizes the increased economic benefits to the nation that could result from TSL 4 for non-standard size PTACs and PTHPs, DOE concludes that the benefits of a Federal standard at TSL 4 would still be outweighed by the economic burden that would be placed upon non-standard size PTAC and PTHP manufacturers.

Next, DOE considered TSL 3. TSL 3 includes the same efficiency levels for non-standard PTACs as non-standard PTHPs. DOE projects that TSL 3 for non-standard size PTACs and PTHPs would save 0.005 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.001 quads. For the Nation as a whole, DOE projects that TSL 3 would result in net savings in NPV of $7 million for non-standard size PTACs and PTHPs, using a discount rate of seven percent, and $19 million for non-standard size PTACs and PTHPs, using a discount rate of three percent. The estimated emissions reductions are 0.18 Mt of CO_2, between 0.01 and 0.34 kt of NO_X, and between 0 and 0.006 t of Hg. Total generating capacity needed in 2042 under TSL 3 for non-standard size PTACs and PTHPs would likely decrease by 0.013 GW.

At TSL 3, DOE projects that the average PTAC or PTHP customer would experience LCC savings. Purchasers of non-standard size PTACs, on average, would experience a decrease in LCC of $30 (2007$) over the life of the product and purchasers of non-standard size PTHPs would save on average $66 (2007$). DOE estimates an LCC increase for 14 percent of customers in the Nation that purchase a non-standard size PTAC, and for 3 percent of customers in the Nation that purchase a non-standard size PTHP. The remaining customers would experience either a decrease or no change in LCC.

The projected change in INPV ranges between a loss of $17 million and a loss of $20 million for the non-standard size PTAC and PTHP industry. Just as with TSL 5, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. The loss of $20 million assumes the continued validity of DOE's projections of partial cost recovery as described in Chapter 13 of the TSD. Even at TSL 3, DOE is concerned about the manufacturers' ability to produce and offer equipment in the full range of cooling capacities that would fit the wide variety of wall sleeves that currently exist. For the larger cooling capacity range (*i.e.*, 15,000 Btu/h) within a given equipment class of non-standard size PTACs and PTHPs with a cooling capacity greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h, DOE believes manufacturers would not be able to produce equipment at the efficiency levels provided by the TSL 3 energy-efficiency equations. Specifically, DOE believes non-standard manufacturers would eliminate equipment due to the stringency of the standard at higher cooling capacity regions. In addition, TSL 3 requires a $23 million investment by the industry in order to transform all of the existing equipment lines available in the current non-standard market to TSL 3 efficiency levels. DOE believes many small non-standard manufacturers would not be able to recover these investments needed to change over all of their existing equipment lines to the efficiency levels required by TSL 3. If some small non-standard manufacturers cannot invest the product and capital conversion costs necessary to comply with TSL 3, they would be forced to abandon their equipment lines and exit the business. Others could be forced to reduce their equipment offerings in order to reduce the magnitude of the investments required to meet TSL 3 efficiency levels for non-standard equipment.

While DOE recognizes the increased economic benefits to the nation and the energy savings that could result from TSL 3 for non-standard size PTACs and PTHPs, DOE concludes that, based on the above, the benefits of an amended energy conservation standard at TSL 3 would be outweighed by the economic burden that would be placed upon non-standard size PTAC and PTHP manufacturers.

Next, DOE considered TSL 2. TSL 2 requires different efficiency levels for non-standard size PTACs and non-standard PTHPs at the same cooling capacity. DOE projects that TSL 2 for non-standard size PTACs and PTHPs would save 0.004 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.001 quads. For the Nation as a whole, DOE projects that TSL 2 would result in net savings in

NPV of $6 million for non-standard size PTACs and PTHPs, using a discount rate of seven percent, and $16 million for non-standard size PTACs and PTHPs, using a discount rate of three percent. The estimated emissions reductions are 0.14 Mt of CO_2, between 0.01 kt and 0.28 kt of NO_X, and between 0 and 0.005 t of Hg. Total generating capacity needed in 2042 under TSL 2 for non-standard size PTACs and PTHPs would likely decrease by 0.010 GW.

At TSL 2, DOE projects that the average PTAC or PTHP customer would experience LCC savings. Purchasers of non-standard size PTACs, on average, would have an LCC decrease of $26 (2007$) over the life of the product and purchasers of non-standard size PTHPs would save on average $66 (2007$). DOE estimates an LCC increase for 6 percent of customers in the Nation that purchase a non-standard size PTAC and for 3 percent of customers in the Nation that purchase a non-standard size PTHP. The remaining customers of non-standard size PTACs and PTHPs would experience either a decrease or no change in LCC.

The projected change in INPV ranges between a loss of $17 million and a loss of $19 million for the non-standard size PTAC and PTHP industry. Just as with other TSLs, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. The loss of $19 million assumes DOE's projections of partial cost recovery as described in Chapter 13 of the TSD remain valid. Since TSL 2 requires non-standard size manufacturers to be produced at the efficiency levels in TSL 3, DOE is concerned about the manufacturer's ability to produce and offer equipment in the full range of cooling capacities to fit the wide variety of wall sleeves that currently exist for non-standard size PTHPs.

For the larger cooling capacity range (*i.e.*, 15,000 Btu/h) within a given equipment class of non-standard size PTACs and PTHPs with a cooling capacity greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h, DOE believes manufacturers would be unable to produce equipment at the efficiency levels provided by the TSL 2 energy-efficiency equations. Specifically, DOE believes non-standard manufacturers would eliminate equipment due to the costs required to satisfy this level at higher cooling capacity regions. In addition, TSL 2 requires a 23.3 million dollar investment in order to transform all of the existing equipment lines available in the current non-standard market to TSL 2 efficiency levels. The investment required at TSL 2 is larger than at TSL 3 because manufacturers could be forced to design separate equipment platforms for non-standard size PTACs and non-standard size PTHPs because of the differences in efficiency level requirements. DOE believes many small manufacturers of non-standard size equipment would be unable to recover these investments needed to change over all of their existing equipment lines to the efficiency levels required by TSL 2. If some small, non-standard manufacturers cannot invest the product and capital conversion costs necessary to comply with TSL 2, they would be forced to abandon their equipment lines and exit the business. Others could be forced to reduce their equipment offerings in order to reduce the magnitude of the investments required to meet TSL 2 efficiency levels for non-standard equipment.

While DOE recognizes the increased economic benefits to the nation and the energy savings that could result from TSL 2 for non-standard size PTACs and PTHPs, DOE concludes, based on the reasons stated above, that the benefits of an amended energy conservation standard at TSL 2 would be outweighed by the economic burden that would be placed upon non-standard size PTAC and PTHP manufacturers.

Last, DOE considered TSL 1. TSL 1 requires the same efficiency levels for non-standard size PTACs and non-standard PTHPs at the same cooling capacity. DOE projects that TSL 1 for non-standard size PTACs and PTHPs would save 0.004 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.001 quads. For the Nation as a whole, DOE projects that TSL 1 would result in net savings in NPV of $5 million for non-standard size PTACs and PTHPs, using a discount rate of seven percent, and $14 million for non-standard size PTACs and PTHPs, using a discount rate of three percent. The estimated emissions reductions are 0.12 Mt of CO_2, between 0.01 kt and 0.23 kt of NO_X, and between 0 and 0.004 t of Hg. Total generating capacity needed in 2042 under TSL 1 for non-standard size PTACs and PTHPs would likely decrease by 0.009 GW.

At TSL 1, DOE projects that the average PTAC or PTHP customer would experience an LCC savings. Purchasers of non-standard size PTACs, on average would experience an LCC decrease of $26 (2007$) over the life of the product and purchasers of non-standard size PTHPs would save on average $62 (2007$). DOE estimates LCC increase for 6 percent of customers in the Nation that purchase a non-standard size PTAC, and for 1 percent of customers in the Nation that purchase a non-standard size PTHP. The remaining customers of non-standard size equipment would experience either a decrease or no change in LCC.

The projected change in INPV ranges between losses of $16 million and $17 million for the non-standard size PTAC and PTHP industry. Just as with other TSLs, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. The loss of $17 million assumes DOE's projections of partial cost recovery as described in Chapter 13 of the TSD remain valid. Even at TSL 1, DOE estimates manufacturers of non-standard PTACs and PTHPs would experience over a 50 percent reduction in INPV as a result of amended energy conservation standards. TSL 1 requires a 22 million dollar investment by the industry in order to transform all of the existing equipment lines available in the current non-standard market to TSL 1 efficiency levels. DOE believes many small manufacturers of non-standard equipment would be unable to recover these investments needed to change over all of their existing equipment lines to the efficiency levels required by TSL 1. If some small non-standard manufacturers cannot invest the product and capital conversion costs necessary to comply with TSL 1, they would be forced to abandon their equipment lines and exit the business. Others could be forced to reduce their equipment offerings in order to reduce the magnitude of the investments required to meet TSL 1 efficiency levels for non-standard equipment.

While DOE recognizes the increased economic benefits to the nation and the energy savings that could result from TSL 1 for non-standard size PTACs and PTHPs, DOE concludes that the benefits of an amended energy conservation standard at TSL 1 would still be outweighed by the economic burden that would be placed upon non-standard size PTAC and PTHP manufacturers. DOE is especially concerned about the large investments required for non-standard size manufacturers to transform their entire equipment offerings to TSL 1 efficiency levels and with the likelihood that small non-standard size manufacturers would exit the market, causing some existing non-standard size PTACs and PTHPs to become unavailable to consumers.

After considering the analysis and weighing the benefits and the burdens, DOE concludes that the benefits of a standard at the efficiency levels

specified by ASHRAE Standard 90.1–1999 outweigh the burdens.

Therefore based on the discussion above, DOE concludes that the efficiency levels beyond those in ASHRAE Standard 90.1–1999 are not economically justified and is adopting the efficiency level in ASHRAE Standard 90.1–1999. Table V.34 demonstrates the amended energy conservation standards for standard size PTACs and PTHPs in the full range of cooling capacities.

TABLE V.34—FINAL ENERGY CONSERVATION STANDARDS FOR NON-STANDARD SIZE PTACS AND PTHPS

Equipment class			Final energy conservation standards *
Equipment	Category	Cooling capacity	
PTAC	Non-Standard Size **	<7,000	EER = 9.4
		7,000–15,000	EER = 10.9 − (0.213 × Cap †)
		>15,000	EER = 7.7
		<7,000	EER = 9.3 COP = 2.7
PTHP	Non-Standard Size **	7,000–15,000	EER = 10.8 − (0.213 × Cap †) COP = 2.9 − (0.026 × Cap †)
		>15,000	EER = 7.6 COP = 2.5

* For equipment rated according to the DOE test procedure (ARI Standard 310/380–2004), all energy efficiency ratio (EER) values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled equipment and evaporatively cooled equipment and at 85 °F entering water temperature for water cooled equipment. All coefficient of performance (COP) values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled equipment.

** Non-standard size refers to PTAC or PTHP equipment with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches.

† Cap means cooling capacity in thousand British thermal units per hour (Btu/h) at 95 °F outdoor dry-bulb temperature.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993), requires each agency to identify in writing the market failure or other problem that it intends to address that warrants agency action such as today's final rule, and to assess the significance of that problem in evaluating whether any new regulation is warranted.

DOE's analysis suggests that much of the hospitality industry segment using PTAC and PTHP equipment tends to be small hotels or motels. DOE believes that these small hotels and motels tend to be individually owned and operated and lack corporate direction in terms of energy policy. The transaction costs for these smaller owners or operators to research, purchase, and install optimum efficiency equipment are too high to make such action commonplace. DOE believes that there is a lack of information and/or information processing capability about energy efficiency opportunities in the PTAC and PTHP market available to hotel or motel owners. Unlike residential heating and air conditioning products, PTACs and PTHPs are not included in energy labeling programs such as the Federal Trade Commission's energy labeling program. Furthermore, the energy use of PTACs and PTHPs depends on the climate and equipment usage and, as such, is not readily available for the owners or operators to decide whether improving the energy efficiency of PTAC and PTHP equipment is cost effective.

PTACs and PTHPs are not purchased in the same manner as other regulated appliances that are sold in retail stores (*e.g.*, room air conditioners). When purchased by the end user, PTACs and PTHPs are more likely to be purchased through contractors and builders that perform the installation. (See Chapter 8 of the final rule TSD) The AHRI Certified Directory includes PTACs and PTHPs, and provides the energy efficiency and capacity information on PTACs and PTHPs produced by participating manufacturers.

To the extent that a lack of information may exist, DOE could expect the energy efficiency for PTACs and PTHPs to be more or less randomly distributed across key variables such as energy prices and usage levels. DOE found that energy efficiency and energy cost savings are not the primary drivers of the hotel and motel business. Instead, hotel and motel operators work on a fixed budget and are concerned primarily with providing clean and comfortable rooms to the customers to ensure customer satisfaction. If consumer satisfaction decreases, hotel or motel owners may incur increased transaction costs, thus preventing access to capital to finance energy efficiency investment.

A related issue is the problem of asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services) among PTAC and PTHP equipment customers. In the case of PTACs and PTHPs, in many cases, the party responsible for the equipment purchase may not be the one who pays the operating cost. For example, PTAC and PTHP equipment are also used in nursing homes (*i.e.*, assisted living) and medical office buildings. In these settings, the builder or complex owner often makes decisions about PTACs and PTHPs without input from tenants and typically does not offer tenants the option to upgrade that equipment. Furthermore, DOE believes that the tenant typically pays the utility bills. If there were no transactions costs, it would be in the builder or complex owners' interest to install equipment that the tenants would choose on their own. For example, a tenant who knowingly faces higher utility bills from low-efficiency equipment would expect to pay less in rent, thereby shifting the higher utility cost back to the complex owner. However, this information is not without a cost. It may not be in the tenant's interest to take the time to develop it or, in the case of the complex owner who installs less efficient equipment, to convey that information to the tenant.

To the extent that asymmetric information and/or high transaction costs are problems, one would expect to find certain outcomes regarding PTAC and PTHP efficiency. For example, all things being equal, one would not expect to see higher rents for office complexes with high-efficiency

equipment. Alternatively, one would expect higher energy efficiency in rental units where the rent includes utilities, compared with those where the tenant pays the utility bills separately. DOE did not receive any data that would enable it to conduct tests of market failure in response to the NOPR.

In addition, this rulemaking is likely to yield certain ''external'' benefits resulting from improved energy efficiency of PTACs and PTHPs that are not captured by the users of such equipment. These benefits include externalities related to environmental and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases. Regarding environmental externalities, the emissions reductions in today's final rule are projected to be 1.06 million metric tons (Mt) of CO_2, between 0.09 kilotons and 2.13 kilotons (kt) of NO_X, and between 0 and 0.037 tons of Hg.

Because today's regulatory action is a significant regulatory action under section 3(f)(1) of Executive Order 12866, section 6(a)(3) of the Executive Order requires DOE to prepare and submit for review to OMB's Office of Information and Regulatory Affairs (OIRA) an assessment of the costs and benefits of today's rule. Accordingly, DOE presented to OIRA for review the draft final rule and other documents prepared for this rulemaking, including a regulatory impact analysis (RIA). These documents are included in the rulemaking record and are available for public review in the Resource Room of DOE's Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The NOPR contained a summary of the RIA, which evaluated the extent to which major alternatives to standards for PTACs and PTHPs could achieve significant energy savings at reasonable cost, compared with the effectiveness of the proposed rule. 73 FR 18907–10. The complete RIA (*Regulatory Impact Analysis for Proposed Energy Conservation Standards for Packaged Terminal Air Conditioners and Heat Pumps*), is contained in the TSD prepared for today's rule. The RIA consists of (1) a statement of the problem addressed by this regulation and the mandate for government action, (2) a description and analysis of the feasible policy alternatives to this regulation, (3) a quantitative comparison of the impacts of the alternatives, and (4) the national economic impacts of the amended standards.

As explained in the NOPR, DOE determined that none of the alternatives that it examined would save as much energy or have an NPV as high as the proposed standards. That same conclusion applies to the amended standards in today's rule. In addition, several of the alternatives would require new enabling legislation, because authority to conduct those alternatives currently does not exist. The RIA report in the TSD provides additional detail on the regulatory alternatives.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov*.

Small businesses, as defined by the Small Business Administration (SBA) for the packaged terminal equipment manufacturing industry, are manufacturing enterprises with 750 employees or fewer. DOE used the small business size standards published on March 11, 2008, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3286 and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description. PTAC and PTHP manufacturing is classified under NAICS 333415, which sets a threshold of 750 employees or less for an entity to be considered as a small business under the ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturer'' category.

For the NOPR, DOE identified and interviewed two manufacturers of PTACs and PTHPs that are small businesses affected by this rulemaking. 73 FR 18910. DOE reviewed the proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. *Id.* On the basis of this review, DOE determined that it could not certify that the proposed standards (TSL4), if promulgated, would have no significant economic impact on a substantial number of small entities. *Id.* DOE made this determination because of the potential impacts of the proposed standard levels on PTAC and PTHP manufacturers generally, including small businesses. *Id.*

Because of these potential impacts on small manufacturers, DOE prepared an IRFA during the NOPR stage of this rulemaking. DOE provided the IRFA in its entirety in the NOPR, 73 FR 18910–12, and also transmitted a copy to the Chief Counsel for Advocacy of the SBA for review. Chapter 13 of the TSD contains more information about the impact of this rulemaking on manufacturers.

The IRFA divided potential impacts on small businesses into two broad categories: (1) Impacts associated with standard size PTAC and PTHP manufacturers; and (2) impacts associated with non-standard size PTAC and PTHP manufacturers. The PTAC and PTHP industry is characterized by both domestic and international manufacturers. Standard size PTACs and PTHPs are primarily manufactured outside of the U.S. with the exception of one domestic PTAC and PTHP manufacturer. Non-standard size PTACs and PTHPs are primarily manufactured domestically by a handful of manufacturers. Consolidation within the PTAC and PTHP industry has reduced the number of parent companies that manufacture similar equipment under different affiliates and labels.

DOE has prepared a FRFA for this rulemaking, which is presented in the following discussion. Comments received in response to the IRFA regarding the impacts on small businesses in the non-standard industry are summarized in section IV.K.2. In addition, DOE further reviewed the non-standard size industry, in particular, the market for small businesses, and presented its finding in section IV.K.2. The FRFA below is written in accordance with the requirements of the Regulatory Flexibility Act, and addresses the comments received from interested parties in response to the IRFA.

1. Reasons for the Final Rule

Part A–1 of Title III of EPCA addresses the energy efficiency of certain types of commercial and

industrial equipment. (42 U.S.C. 6311–6317) It contains specific mandatory energy conservation standards for commercial PTACs and PTHPs. (42 U.S.C. 6313(a)(3)) EPACT 1992, Public Law 102–486, also amended EPCA with respect to PTACs and PTHPs, providing definitions in section 122(a), test procedures in section 122(b), labeling provisions in section 122(c), and the authority to require information and reports from manufacturers in section 122(e). DOE publishes today's final rule pursuant to Part A–1. The PTAC and PTHP test procedures appear at 10 CFR 431.96.

EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, as in effect on October 24, 1992 (ASHRAE Standard 90.1–1989), for each type of covered equipment listed in section 342(a) of EPCA, including PTACs and PTHPs. (42 U.S.C. 6313(a)) For each type of equipment, EPCA directed that if ASHRAE Standard 90.1 is amended, DOE must adopt an amended standard at the new level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In accordance with these statutory criteria, DOE is amending the energy conservation standards for PTACs and PTHPs by raising the efficiency levels for this equipment above the efficiency levels specified by ASHRAE Standard 90.1–1999 for standard size PTACs and PTHPs and adopting the efficiency levels in ASHRAE Standard 90.1–1999 for non-standard size PTACs and PTHPs.

2. Objectives of, and Legal Basis for, the Rule

To determine whether economic justification exists, DOE reviews comments received and conducts analysis to determine whether the economic benefits of the amended standard exceed the burdens to the greatest extent practicable, taking into consideration seven factors set forth in 42 U.S.C. 6295(o)(2)(B) (see section II.B of this preamble). (42 U.S.C. 6316(a)) Further information concerning the background of this rulemaking is provided in Chapter 1 of the TSD.

3. Description and Estimated Number of Small Entities Regulated

Through market research, interviews with manufacturers of all sizes, discussions with industry trade groups, and comments from interested parties on the IRFA, DOE identified six small manufacturers in the PTAC and PTHP industry. These six manufacturers can be further sub-categorized by their manufacturing scale: (1) One small business competes successfully making standard-size PTACs and PTHPs in high volumes; (2) the remaining five small businesses make PTACs and PTHPs at much lower volumes. While three of these five low-volume small businesses make PTACs and PTHPs that fit into standard-size sleeves, the customization options offered by these manufacturers suggests that these units have more in common with the non-standard size equipment that these manufacturers also offer than with the high-volume standard size PTAC and PTHP equipment on the market. DOE found one small manufacturer of standard size PTACs and PTHPs manufactures equipment outside the U.S. DOE found the five small manufacturers produce equipment domestically. None of the six firms are divisions of larger owned companies.

4. Description and Estimate of Compliance Requirements

Potential impacts on all manufacturers of PTACs and PTHPs vary by TSL. Margins for all businesses could be impacted negatively by the adoption of any TSL, since all manufacturers have expressed an inability to pass on cost increases to retailers and consumers. The six small domestic businesses under discussion differ from their competitors in that they are much smaller entities than their competitors in the standard PTAC and PTHP industry. Any rule affecting products manufactured by these small businesses will affect them disproportionately because of their size and their focus on non-standard PTAC and PTHP equipment. However, due to the low number of competitors that agreed to be interviewed, DOE was not able to characterize the small business industry segment with a separate cash-flow analysis due to concerns about maintaining confidentiality.

For all other TSLs concerning PTAC and PTHP equipment (which are not being considered in today's rule), the impact on small, focused business entities will be proportionately greater than for their competitors since these businesses lack the scale to afford significant R&D expenses and capital expansion budgets. The exact extent is hard to gauge since manufacturers did not respond to all proposed investment requirements by TSL during interviews. However, research associated with other small entities in prior rulemakings suggests that many costs associated with complying with rulemakings are typically fixed, regardless of production volume. Thus, given their focus and scale, any appliance rulemaking could affect these six small businesses disproportionately compared to their larger and more diversified competitors.

5. Significant Issues Raised by Public Comments

DOE summarized comments from interested parties in section IV.K.1.

6. Steps DOE Has Taken To Minimize the Economic Impact on Small, Non-Standard Size PTAC and PTHP Manufacturers

In consideration of the benefits and burdens of standards, including the burdens posed to small manufacturers, DOE concluded that the efficiency levels in ASHRAE Standard 90.1–1999 are the highest levels that can be justified for non-standard size PTAC and PTHP equipment. DOE discusses the potential impacts on small, non-standard manufacturers from higher TSLs in section IV.K.1. Since DOE has adopted the efficiency levels in ASHRAE Standard 90.1–1999, DOE believes it has taken the necessary steps to minimize the economic impact on small, non-standard size PTAC and PTHP manufacturers.

C. Review Under the Paperwork Reduction Act

DOE stated in the NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 73 FR 18912. DOE received no comments on this in response to the NOPR and, as with the proposed rule, today's rule imposes no information and recordkeeping requirements. DOE takes no further action in this rulemaking with respect to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE prepared an environmental assessment of the impacts of today's standards, which it published as a chapter within the TSD for the final rule. DOE found the environmental effects associated with today's various standards levels for PTACs and PTHPs to be not significant, and therefore it is issuing a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on

Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process that it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined the proposed rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. 73 FR 18912. DOE received no comments on this issue in response to the NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. DOE takes no further action in today's final rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform 61 FR 4729 (February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

As described in the NOPR, title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) imposes requirements on Federal agencies when their regulatory actions will have certain types of impacts on State, local, and Tribal governments and the private sector. 73 FR 18912–13. DOE concluded that, because this rule would contain neither an intergovernmental mandate nor a mandate that may result in expenditure of $100 million or more in any year, the requirements of UMRA do not apply to the rule. *Id.* DOE received no comments concerning the UMRA in response to the NOPR, and its conclusions on this issue are the same for the final rule as for the proposed rule. DOE takes no further action in today's final rule with respect to the UMRA.

H. Review Under the Treasury and General Government Appropriations Act of 1999

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). 73 FR 18913. DOE received no comments concerning Section 654 in response to the NOPR, and thus takes no further action in today's final rule with respect to this provision.

I. Review Under Executive Order 12630

DOE determined, under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, 53 FR 8859 (March 18, 1988), that today's rule would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution. 73 FR 18913. DOE received no comments concerning Executive Order 12630 in response to the NOPR, and thus takes no further action in today's final rule with respect to this Executive Order.

J. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR at 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OIRA a Statement of Energy Effects for any significant energy action. DOE determined that the proposed rule was not a significant energy action within the meaning of Executive Order 13211. 73 FR 18913. Accordingly, it did not prepare a Statement of Energy Effects on the proposed rule. DOE received no comments on this issue in response to the NOPR. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and has not prepared a Statement of Energy Effects on the rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, the OMB, in consultation with the Office of Science and Technology, issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the federal government, and, as indicated in the NOPR, this includes influential scientific information related to agency regulatory actions, such as the analyses in this rulemaking. 73 FR 18913.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer

Review Report pertaining to the energy conservation standards rulemaking analyses. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following web site: *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html*. DOE on June 28–29, 2005.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to Congress.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation.

Issued in Washington, DC, on September 29, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, chapter II of title 10, Code of Federal Regulations, part 431 is amended to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.92 is amended by adding in alphabetical order new definitions for ''Non-standard size,'' and ''Standard size'' to read as follows:

§ 431.92 Definitions concerned commercial air conditioners and heat pumps.

* * * * *

Non-standard size means a packaged terminal air conditioner or packaged terminal heat pump with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches.

* * * * *

Standard size means a packaged terminal air conditioner or packaged terminal heat pump with wall sleeve dimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches.

* * * * *

■ 3. Section 431.97 is amended by revising paragraph (a), including Tables 1 and 2, and by adding a new paragraph (c) to read as follows:

§ 431.97 Energy efficiency standards and their effective dates.

(a) All small or large commercial package air conditioning and heating equipment manufactured on or after January 1, 1994 (except for large commercial package air-conditioning and heating equipment, for which the effective date is January 1, 1995), and before January 1, 2010, in the case of the air-cooled equipment covered by the standards in paragraph (b), must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section. Each standard size packaged terminal air conditioner or packaged terminal heat pump manufactured on or after January 1, 1994, and before September 30, 2012, must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section. Each non-standard size packaged terminal air conditioner or packaged terminal heat pump manufactured on or after January 1, 1994, and before September 30, 2010, must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section.

TABLE 1 TO § 431.97—MINIMUM COOLING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Sub-category	Efficiency level [1]	
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase	<65,000 Btu/h	Split System	SEER = 10.0	SEER = 10.0.
			Single Package	SEER = 9.7	SEER = 9.7.
	Air Cooled	≥65,000 Btu/h and <135,000 Btu/h.	All	EER = 8.9	EER = 8.9.
	Water Cooled, Evaporatively Cooled, and Water-Source.	<17,000 Btu/h	AC	EER = 9.3	EER = 12.1.
			HP	EER = 9.3	EER = 11.2.
		≥17,000 Btu/h and <65,000 Btu/h.	AC	EER = 9.3	EER = 12.1.
			HP	EER = 9.3	EER = 12.0.
		≥65,000 Btu/h and <135,000 Btu/h.	AC	EER = 10.5	EER = 11.5.[2]
			HP	EER = 10.5	EER = 12.0.
Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled	≥135,000 Btu/h and <240,000 Btu/h.	All	EER = 8.5	EER = 8.5.
	Water-Cooled and Evaporatively Cooled.	≥135,000 Btu/h and <240,000 Btu/h.	All	EER = 9.6	EER = 9.6.[3]

TABLE 1 TO § 431.97—MINIMUM COOLING EFFICIENCY LEVELS—Continued

Product	Category	Cooling capacity	Sub-category	Efficiency level [1]	
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003
Packaged Terminal Air Conditioners and Heat Pumps.	All	<7,000 Btu/h	All	EER = 8.88	EER = 8.88.
		≥7,000 Btu/h and ≤15,000 Btu/h.		EER = 10.0 − (0.16 × capacity [in kBtu/h at 95 °F outdoor dry-bulb temperature]).	EER = 10.0 − (0.16 × capacity [in kBtu/h at 95 °F outdoor dry-bulb temperature]).
		>15,000 Btu/h		EER = 7.6	EER = 7.6.

[1] For equipment rated according to the ARI standards, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively cooled products and at 85 °F entering water temperature for water-cooled products. For water-source heat pumps rated according to the ISO standard, EER must be rated at 30 °C (86 °F) entering water temperature.
[2] Deduct 0.2 from the required EER for units with heating sections other than electric resistance heat.
[3] Effective 10/29/2004, the minimum value became EER = 11.0.

TABLE 2 TO § 431.97—MINIMUM HEATING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Sub-category	Efficiency level [1]	
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase	<65,000 Btu/h	Split System	HSPF = 6.8	HSPF = 6.8.
			Single Package	HSPF = 6.6	HSPF = 6.6.
	Water-Source	<135,000 Btu/h	Split System and Single Package.	COP = 3.8	COP = 4.2.
	Air Cooled	≥65,000 Btu/h and <135,000 Btu/h.	All	COP = 3.0	COP = 3.0.
Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled	≥135,000 Btu/h and <240,000 Btu/h.	Split System and Single Package.	COP = 2.9	COP = 2.9.
Packaged Terminal Heat Pumps.	All	All	All	COP = 1.3 + (0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels).	COP = 1.3 + (0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels).

[1] For units tested by ARI standards, all COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps. For heat pumps tested by the ISO Standard 13256–1, the COP values must be obtained at the rating point with 20 °C (68 °F) entering water temperature.

* * * * *

(c) Each standard size packaged terminal air conditioner or packaged terminal heat pump manufactured on or after September 30, 2012 and each non-standard size packaged terminal air conditioner or packaged terminal heat pump manufactured on or after September 30, 2010, shall have an Energy Efficiency Ratio and Coefficient of Performance no less than:

Equipment class			Energy conservation standards *
Equipment	Category	Cooling capacity (British thermal units per hour [Btu/h])	
PTAC	Standard Size	<7,000	EER = 11.7
		7,000–15,000	EER = 13.8 − (0.300 × Cap**)
		>15,000	EER = 9.3
	Non-Standard Size	<7,000	EER = 9.4
		7,000–15,000	EER = 10.9 − (0.213 × Cap**)
		>15,000	EER = 7.7

Equipment class			Energy conservation standards *
Equipment	Category	Cooling capacity (British thermal units per hour [Btu/h])	
PTHP	Standard Size	<7,000	EER = 11.9
		7,000–15,000	COP = 3.3
		>15,000	EER = 14.0 − (0.300 × Cap**)
			COP = 3.7 − (0.052 × Cap**)
	Non-Standard Size	<7,000	EER = 9.5
			COP = 2.9
		7,000–15,000	EER = 9.3
			COP = 2.7
		>15,000	EER = 10.8 − (0.213 × Cap**)
			COP = 2.9 − (0.026 × Cap**)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85 °F entering water temperature for water cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps.

** Cap means cooling capacity in thousand British thermal units per hour (Btu/h) at 95 °F outdoor dry-bulb temperature.

* * * * *

APPENDIX

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

DEPARTMENT OF JUSTICE,
Antitrust Division,
Main Justice Building,
950 Pennsylvania Avenue, NW.,
Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645(f), *antitrust@justice.usdoj.gov*, *http://www.usdoj.gov*.

June 6, 2008

Warren Belmar, Deputy General Counsel for Energy Policy, Department of Energy, Washington, DC 20585.

Dear Deputy General Counsel Belmar:

I am responding to your April 3, 2008 letter seeking the views of the Attorney General about the potential impact on competition of two proposed energy conservation standards for packaged terminal air conditioners (''PTACs'') and packaged terminal heat pumps (''PTHPs''). Your request was submitted pursuant to Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended, (''EPCA''), 42 U.S.C. 6295(o)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products. In addition to harming consumers directly through higher prices, these effects could undercut the ultimate goals of the legislation.

We have reviewed the proposed standards and the supplementary information submitted to the Attorney General, including the transcript of the May 1 public meeting on the proposed standards. We have additionally conducted interviews with members of the industry.

What we have heard raises legitimate issues about whether the proposed standards may adversely affect competition. The proposed standard for non-standard PTACs and PTHPs may create a risk that is too strict for the manufacturers to satisfy, given the state of technology.

Customers that own older buildings with non-standard wall openings for air conditioning and heating units could face the choice of incurring capital expenditures to alter the size of the wall openings so that they could use standard sized units, or of not being able to replace their nonstandard sized units with units that are appropriately sized and meet the proposed energy conservation standards. Similarly, we have heard that the proposed standards for standard sized PTHPs may be too strict for manufacturers to satisfy. Since there are few manufacturers of standard PTHPs and of nonstandard PTACs and PTHPs, if some manufacturers cannot meet the proposed standards, consumers will have fewer competitive alternatives and may pay higher prices.

The Department of Justice is not in a position to judge whether manufacturers will be able to meet the proposed standards—we urge, however, the Department of Energy to take into account these possible impacts on competition in determining its final energy efficiency standard for PTACs and PTHPs.

Sincerely,

Deborah A. Garza,

Acting Assistant Attorney General.

[FR Doc. E8–23312 Filed 10–6–08; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Tuesday,
October 7, 2008

Part IV

Federal Trade Commission

16 CFR Parts 3 and 4
Rules of Practice; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Rules of Practice

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Proposed rule amendments; request for public comment.

SUMMARY: The FTC is proposing to amend Parts 3 and 4 of its Rules of Practice, in order to further expedite its adjudicative proceedings, improve the quality of adjudicative decision making, and clarify the respective roles of the Administrative Law Judge (''ALJ'') and the Commission in Part 3 proceedings.

DATES: Written comments must be received on or before November 6, 2008.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Parts 3 and 4 Rules of Practice Rulemaking—P072104'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records and other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . . ,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-part3rules*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-part3rules*). If this document appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *www.ftc.gov* to read this document and the news release describing it.

A comment filed in paper form should include the ''Parts 3 and 4 Rules of Practice Rulemaking—P072104'' reference both in the text and on the envelope, and should be mailed or delivered by courier to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex R), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*)

FOR FURTHER INFORMATION CONTACT: Michael D. Bergman, Attorney, (202) 326–3184, or Lisa M. Harrison, Attorney, (202) 326–3204, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington DC 20580.

SUPPLEMENTARY INFORMATION: This discussion contains the following sections:

I. Introduction

A. Need for Reform of the Commission's Adjudicatory Process

The Commission has periodically reviewed its rules and procedures governing the process of administrative adjudication at the Commission (''Part 3 Rules'') to determine if its administrative adjudication process can be improved, and has made changes it considered appropriate. In particular, the Commission's Part 3 adjudicatory process has long been criticized as being too protracted. *See, e.g., FTC v. Freeman Hosp.*, 911 F.Supp. 1213, 1228 n.8 (W.D. Mo. 1995) (''The average time from the issuance of a complaint by the FTC to an initial decision by an administrative law judge averaged nearly three years in 1988. Moreover, additional time will be required if that initial decision is appealed.''), *aff'd,* 69 F.3d 260 (8th Cir. 1995); *see also National Dynamics Corp. v. FTC*, 492 F.2d 1333, 1335 (2d Cir. 1974) (remarking upon the ''leisurely course typical of FTC proceedings''); J. Robert Robertson, *FTC Part III Litigation: Lessons from Chicago Bridge and Evanston Northwestern Healthcare*, *20 Antitrust 12* (Spring 2006); *Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission, 58 Antitrust L.J. 43*, 116 n.167 (1989) (''It is disappointing that the Commission . . . continues to have problems of delay.'').

Protracted Part 3 proceedings have at least three undesirable consequences. First, in merger cases, such protracted proceedings may result in parties abandoning transactions before their antitrust merits can be adjudicated. Second, protracted Part 3 proceedings may result in substantially increased litigation costs for the Commission and respondents whose transactions or practices are challenged. For example, protracted discovery schedules and pretrial proceedings can result in nonessential discovery and motion practice that can be very costly to both the Commission and respondents. Third, protracted Part 3 proceedings do not necessarily result in decisions that are more just or fair. To the contrary, there is some truth to the adage that frequently ''justice delayed, is justice denied.''

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

To address these concerns, the Commission has periodically engaged in reform efforts to minimize delay and improve the quality of the administrative decisionmaking process in a fair manner fully consistent with the Administrative Procedure Act (''APA'')[2] without prejudicing the due process rights of the parties in these proceedings. For example, in 1994 the Commission adopted a guideline to expedite the preparation and issuance of final orders and opinions from an initial decision. *See* (*http://www.ftc.gov/os/adjpro/adjpropreppprocedures.pdf*). In 1996, the Commission adopted the ''fast track'' procedure in Rule 3.11A and other changes. 61 FR 50640 (Sept. 26, 1996). In 2001, the Commission issued another package of approximately twenty rule changes, 66 FR 17622 (Apr. 3, 2001),[3] and has implemented other rule changes throughout the past decade.

More recently, Commission staff engaged in a broad and systematic internal review to further improve its Part 3 practices and procedures in light of the Commission's recent adjudicatory experiences. The goal of this effort was for significant improvement in the Part 3 process through comprehensive review rather than piecemeal modifications of a limited number of rules, to ensure that the rules are consistent with one another and that they are workable in practice. Discussions involved input from various Bureaus within the Commission, the Office of the General Counsel, the Office of the Administrative Law Judges, an evaluation of the rules and procedures of the federal courts and other agencies' adjudicative procedures, as well as the legal standards imposed by the APA.

The Commission believes that any adjudicative process should balance three factors: the public interest in a high quality decisionmaking process; the interests of justice in an expeditious resolution of litigated matters; and the very real interest of the parties in litigating matters economically without unnecessary expense. For example, in principle, high quality expeditious adjudications may impose costs on the parties or the agency that they may not need to bear if the demands of a given case permit a more leisurely adjudicative process. Alternatively, attempts to increase efficiency or decrease costs to those involved could lead to trade offs in the quality of the ultimate result. The Commission believes that these comprehensive proposed rule revisions would strike an appropriate balance between the need for fair process and quality decisionmaking, the desire for efficient and speedy resolution of matters, and the potential costs imposed on the Commission and the parties.

B. Respective Roles of the Commission and the Administrative Law Judge

The Commission was established by Congress and President Woodrow Wilson in 1914 to be an expert, specialized agency providing guidance to consumers and the business community on sophisticated questions involving unfair methods of competition, later expanded to issues involving unfair or deceptive acts or practices.[4] To accomplish this goal, it was provided the authority not only to prosecute cases and serve as a ''think tank'' making policy, but also to adjudicate its own cases and render decisions.[5] Congress determined that the Commission could use its expertise and administrative adjudicative powers as a ''uniquely effective vehicle for the development of antitrust law in complex settings in which the agency's expertise [could] make a measurable difference.''[6] Certainty, consistency and accuracy in Commission decisions could serve as a tool not only to improve the resolution of individual cases, but to provide broad guidance to industry and the public and help set the policy agenda.[7]

In the influential 1941 report by the Attorney General that became the basis for the subsequently enacted APA, the Attorney General identified numerous advantages to administrative adjudications: for example, the potential for uniformity of decisions, efficiency, and the inability of courts to handle the volume of suits heard by administrative agencies.[8] One of the most critical advantages, and a cornerstone characteristic of administrative agencies, is expertise. The Congress and the Executive have long recognized that the ability of agencies to devote continuous time, supervision, and expertise to complex problems calling for specialized knowledge is a critical advantage and an important reason for the creation of administrative agencies.[9] With its expertise and unique institutional tools, the Commission was created to be—and continues to function as—a forum for expert adjudication.

The Attorney General's Final Report also described the role of hearing examiners (the predecessor to ALJs) in all agencies that use them. The report observed that the hearing examiner ''plays an essential part of the process of hearing and deciding'' given the difficulty for busy agency heads to fulfill these roles.[10] Specifically, the Report discussed the importance of having a presiding officer, such as an ALJ, hear the evidence and make an initial decision or recommendation because agency heads may lack the time to ''read the voluminous records and winnow out the essence of them.''[11] The Attorney General's Manual on the APA further explained that a general statutory purpose of the APA was to ''enhance[] the status and role of hearing officers'' and, because the APA vests in the ALJs the enumerated powers to the extent that such powers have been given to the agency itself, ''an agency is without power to withhold such powers from its hearing officers.''[12] ALJs have wide ranging authority under the APA.[13]

At the same time, the APA specifies that such authority is ''subject to the published rules of the agency,'' which ''is intended to make clear the authority of the agency to lay down policies and procedural rules which will govern the exercise of such powers by [ALJs].''[14] Thus, the Supreme Court ''has for more than four decades emphasized that the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments.'' *Vermont*

[2] 5 U.S.C. 551 *et seq.*

[3] As discussed below in the section-by-section summary of the proposed rule revisions, the Commission is proposing certain rule revisions to rules it implemented previously that had lengthened the process. For example, it is proposing to revise Rule 3.12(a) (as amended in the 2001 revisions), which permits the tolling of the period to answer the complaint until resolution of certain motions, because parties have other procedural means available to them that would not unduly delay the proceedings. Similarly, the Commission is proposing a modest reduction in the period of time to schedule an initial pretrial conference under Rule 3.21(b) that had been enlarged in the 2001 revisions.

[4] *Final Report of the Attorney General's Committee on Administrative Procedure 16 (1941)* [hereinafter *Attorney General's Final Report*]; *see also* Marc Winerman, *The Origins of the FTC: Concentration, Cooperation, Control, and Competition*, *71 Antitrust L.J. 1* (2003) (discussing the formation and history of the FTC); D. Bruce Hoffman & M. Sean Royall, *Administrative Litigation at the FTC: Past, Present, and Future*, *71 Antitrust L.J. 319* (2003) (discussing the evolution of administrative adjudication at the FTC).

[5] Hoffman & Royall, *supra* note 4, at 319.

[6] *Id.* at 319–20.

[7] *Id.*

[8] *Attorney General's Final Report*, *supra* note 4, at 11–18.

[9] *Id.* at 15.

[10] *Id.* at 47.

[11] *Id.* at 45–46.

[12] *Attorney General's Manual on the Administrative Procedure Act 74* (1947) [hereinafter *Attorney General's Manual*].

[13] *See* 5 U.S.C. 556(c).

[14] *Attorney General's Manual*, *supra* note 12, at 74–75.

Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 524 (1978). In accordance with the APA, the Commission's rules contemplate an important role for its ALJs not only in ensuring a fair and orderly process but also in assuring the public that the Commission's proceedings are fair. Under Rule 0.14, the Commission delegates to the ALJs ''the initial performance of statutory fact-finding functions and initial rulings on conclusions of law, to be exercised in conformity with Commission decisions and policy directives and with its Rules of Practice.''[15] Further, Rule 3.42(c) provides that presiding officials ''shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order,'' and that they shall have ''all powers necessary to that end.''[16] The Commission believes that the following proposed rule revisions would ensure the proper balance between the Commission's expertise and the important function to be served by its ALJs.

These proposed rule provisions can be considered an important first step, but not the end of the process. To expedite such reforms, the Commission intends to establish an internal Standing Rules Committee to address potential rule changes that may be needed in the future, with this standing committee's recommendations to be reviewed annually by the Commission. We recognize that, if adopted, the amended rules' use in actual litigation, the comments invited by this document, as well as future events, may reveal the need for further amendments, and that a standing committee could ensure that the Commission's rules remain current. The Commission also announces today its intention to make best efforts to expedite its preparation and disposition of final orders and opinions in its review of initial decisions in adjudicatory proceedings. The Commission understands that public concern about Part 3 delay is not limited to the proceedings before the ALJ, but extends to the delay occasionally incurred by Commission resolution of appeals of initial decisions. The Commission intends to expedite all phases of the Part 3 process.

C. Overview of Proposed Rule Revisions

The Commission staff's effort has culminated in comprehensive and systematic proposed rule changes. We believe that administrative rules that bring the Commission's expertise into play earlier and more often during the Part 3 process will likely further the Congressional purpose that the Commission be a proper forum for expert adjudication and ensure the high quality of the Commission's decisionmaking. For ease of reference, the proposed revisions discussed in the following section can be organized into certain categories, generally designed to improve the quality of decisionmaking or to expedite the Part 3 process by imposing stricter deadlines throughout the prehearing or hearing process, or by giving the Commission the authority to intercede earlier in the proceedings.

Tighter time limits. Several of the proposed rule revisions allow the ALJ or the Commission to impose tighter time periods during the adjudicatory process. For example, Rule 3.1 would provide that the ALJ or the Commission may shorten any time periods set in the rules provided that no party will be unfairly prejudiced. Rule 3.11 would require that the date of the evidentiary hearing be set in the notice accompanying the complaint, which would be 5 months from the date of the complaint in merger cases and 8 months from the date of the complaint in non-merger cases, unless the Commission orders otherwise. Rule 3.12 would require the respondent to file its answer within 14 days of service of the complaint, instead of 20. Rule 3.21 would impose strict deadlines on prehearing procedures, including requiring that the parties' initial meet and confer session and the initial scheduling conference take place shortly after the answer is filed. Rule 3.51 would be amended to eliminate the authority of the ALJ to extend the one-year deadline for filing initial decisions, and would provide that any extensions be approved by the Commission only where it finds there are ''extraordinary circumstances.''

Earlier Commission involvement. Other proposed rule revisions are intended to ensure that the Commission is appropriately involved earlier in the adjudicatory process. For example, Rules 3.22 and 3.24 would provide authority to the Commission to decide in the first instance all dispositive prehearing motions, including motions for summary decision, unless it refers the motion to the ALJ, while at the same time ensuring that the underlying proceedings are not stayed pending resolution of the dispositive motion absent a Commission order. The proposed revisions are intended to avoid the substantial delay that can result from an erroneous ruling by the ALJ on legal and policy issues that are within the Commission's expertise. Rule 3.42 would expressly provide authority for the Commission or an individual Commissioner to preside over discovery and other prehearing proceedings before transferring the matter to the ALJ.

Discovery and motion practice reforms. Other proposed rule changes are intended to expedite and improve the quality of the proceedings by making the discovery process and motion practice more efficient. For example, Rule 3.22 would impose word count limits on both dispositive and nondispositive motions. Rule 3.31 would limit the scope of the search for discoverable materials for complaint counsel, respondents, and third parties to minimize the burden and costs of searching for materials that are likely either duplicative or privileged, unless there has been a sufficient showing of need. Rule 3.31 would also expressly limit waivers resulting from the inadvertent disclosure of privileged materials. Rule 3.31 would further require the ALJ to issue a standard protective order that is intended to limit delay from negotiations and disputes arising from case-specific orders and to ensure that privileged information, competitively sensitive information, and personally sensitive information are treated consistently in all Part 3 cases. A new Rule 3.31A would govern expert discovery and would impose strict deadlines, to begin essentially at the end of fact discovery, to identify expert witnesses and to submit expert reports and rebuttal expert reports, and would limit each side to 5 expert witnesses unless there are ''extraordinary circumstances.'' Rule 3.36 would impose a heightened requirement for subpoenas issued to component offices of the Commission that are not involved in the litigation. Rule 3.37 would specify procedures governing the exchange of relevant ''electronically stored information,'' and Rule 3.38 would be amended to impose strict deadlines and word count limits to resolve motions to compel discovery.

Hearings. Other proposed rule revisions are intended to expedite and streamline the evidentiary hearing. For example, Rule 3.41 would limit the length of hearings to 210 hours—the equivalent of 30 seven-hour trial days—unless there is a showing of ''good cause,'' would limit each side to one half of the trial time, and would limit the length of opening and closing arguments. Rule 3.43 would be revised to expressly permit at the hearing the use of hearsay evidence—including prior testimony—if sufficiently reliable, as well as the admission of relevant statements or testimony by a party-opponent and the self-authentication

[15] 16 CFR 0.14.

[16] 16 CFR 3.42(c).

and admission of third party documents. Rule 3.44 would require that witness testimony be video recorded digitally and made part of the official record so that the Commission, if appropriate, can make an independent assessment of witness demeanor. Rule 3.46 would impose strict deadlines for the simultaneous filing of proposed findings, conclusions, and supporting briefs.

Initial decision and Commission review. As noted above, Rule 3.51 would maintain the one-year deadline for the issuance of the initial decision (except where the Commission otherwise orders), but would require that the initial decision be issued within 70 days of the last filed proposed findings. Rule 3.52 would be revised to shorten the lengths of principal briefs on appeal to the Commission to 14,000 words and reply briefs to 7,000 words, lengths consistent with the approach taken in the Federal Rules of Appellate Procedure, unless otherwise permitted by the Commission. In this regard, the Commission notes that it has the benefit of all the briefs, legal memoranda, and proposed findings of fact that the parties have submitted to the ALJ.

Finally, the Commission intends to make certain technical revisions throughout the rules including, for example, eliminating the convention of specifying numbers in both written and numerical form, and substituting gender-neutral language.

The proposed rule revisions relate solely to agency practice and, thus, are not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(a)(2). Although the proposed rule revisions are exempt from these requirements, the Commission invites comment on them before deciding whether to adopt them. The proposed revisions are also not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and the requirements of the Paperwork Reduction Act, 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4 (exempting information collected during the conduct of administrative proceedings or investigations).

II. Section-By-Section Analysis of the Proposed Rule Revisions

The following is a section-by-section analysis of the proposed revisions to Part 3 of the Commission's Rules, and the proposed revision to Rule 4.3, which would allow for extensions in certain circumstances of the time limits in the Part 3 Rules.

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings

Section 3.1: Scope of the rules in this part.

The Rule would be amended to state that the Part 3 Rules generally apply only to ''formal'' adjudicative proceedings. This change, if adopted, would clarify that the Part 3 Rules generally apply only to the types of adjudication governed by the adjudication provisions in the APA.[17] These provisions only govern cases of ''adjudication required by statute to be determined on the record after opportunity for an agency hearing.''[18] Rule 3.2, as amended, would specify further the types of adjudicative proceedings that are subject to the Part 3 Rules.

The Rule would be amended further to allow the ALJ or the Commission to shorten time periods set by the Rule, provided that the shortened time periods would not unfairly prejudice any party. This authority could be used in proceedings where expedited procedures would serve the public interest (*e.g.,* unconsummated mergers) or where the issues do not require elaborate discovery or evidentiary hearings (*e.g.,* cases where the parties agree that a copious evidentiary record already exists that merely needs to be supplemented).

Section 3.2: Nature of adjudicative proceedings.

The technical revisions to this Rule would clarify that Commission consideration of consent orders—in addition to negotiations of consent orders—are not adjudicative proceedings. The proposed changes also omit from the list of excluded items proceedings under specific statutes that have rarely occurred in recent decades.

Subpart B—Pleadings

Section 3.11: Commencement of proceedings.

The proposed Rule amendment specifies that the actual date for the evidentiary hearing would be 5 months from the date the complaint is issued in merger cases and 8 months from the date of the complaint in all other cases. The proposed change would also give the Commission discretion to determine a different date for the evidentiary hearing when it issues the complaint. As amended, Rule 3.21(c), discussed below, would provide that the hearing date can be extended by the Commission for good cause after the complaint is issued.

In most cases where the issues are not exceptionally complex and the premerger process has been complete, the Commission believes a 5-month complaint-to-evidentiary-hearing process should be feasible. Considering the ''safety valve'' built into the proposed Rule and the ability of respondents' counsel to engage in pre-complaint meetings with the Commissioners where they might advocate for longer post-complaint discovery periods, the proposed Rule would appear to be flexible enough to accommodate the exceptional case. Similarly, the Commission believes a 8-month complaint-to-evidentiary-hearing process is feasible for all other cases. Here too, the amended language, if adopted, would be broad enough to allow the Commission either to set a later hearing date at the time it issues the complaint or, under amended Rule 3.21(c), to entertain a request for more time upon a showing of good cause post-complaint.

Proposed Rule 3.11 would also delete paragraph (c), which has allowed the respondent to file a motion for more definite statement. If a respondent elects to file such a motion, or any other motion, it tolls the deadline for respondent to file an answer to the complaint that would result in substantial delay in the proceedings. The proposed Rule revision would still provide the respondent an opportunity to raise similar objections and to file a motion to dismiss, but under the proposed amendment to Rule 3.22(b) discussed below, the Commission's consideration of the motion would not stay proceedings before the ALJ unless the Commission so orders.

These proposed amendments to Rule 3.11 are intended to expedite cases by requiring the Commission to set a fixed deadline for the start of the evidentiary hearing and the ALJ and the parties to adhere to the deadline.

Section 3.12: Answer.

The proposed Rule amendment would shorten the current deadline in paragraph (a) for filing an answer from 20 to 14 days, a time period that should be sufficient for parties who, during the course of the precomplaint investigation, have become familiar with the issues. The proposed Rule revision would also eliminate the provision in paragraph (a) that allows the filing of any motion to toll the deadline for respondent to file an answer to the complaint, which had been added by the Commission in its

[17] 5 U.S.C. 554, 556–57.

[18] 5 U.S.C. 554.

2001 Rule amendments.[19] The Commission believes the Rule, if amended as proposed in this document, would result in an earlier prehearing conference, earlier discovery, and a more expeditious closure to the proceeding.

The proposed changes to paragraphs (b) and (c) would remove the ALJ's authority to render an initial decision when the allegations of the complaint are admitted or there is a default. Instead, the Commission would render its final decision on the basis of the facts alleged in the complaint. One rationale for the provision of ''hearing officers'' (the predecessor to ALJs) in the APA was to alleviate the burden on agency heads of hearing evidence and reviewing a voluminous record.[20] When those burdens do not exist, it will likely be more efficient for the Commission to issue a final opinion and order without the intermediate step of an ALJ's initial decision.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Decisions

Section 3.21: Prehearing procedures.

As amended, Rule 3.21(a) would require that the parties' initial meet-and-confer session take place within 5 days of the answer and would require the parties to discuss electronically stored information (ESI) at that time, including the scope of and the time period for the exchange of ESI and the format for exchanging such information. This change is intended to help expedite the case and facilitate resolution of production issues in ways that minimize costs. Rule 3.21(a) would also be modified by deleting a phrase that suggested that the parties should discuss a proposed hearing date because, under proposed Rule 3.11, such a date will already have been set by the Commission when it issued the complaint, and under proposed Rule 3.21(c), that date could be modified by the Commission upon a showing of good cause. Rule 3.21(a), as amended, would also specify broad subjects to be discussed at the parties' meet and confer session(s) before the scheduling conference.

Revised paragraph (b) would advance the deadline for the scheduling conference from 14 days after the answer is filed to 10 days after the answer is filed. Although the Commission extended the deadline to 14 days in 2001,[21] it believes the 10-day deadline is reasonable for most cases. In extraordinary circumstances, the scheduling conference can be postponed. Revised paragraph (b) would include additional items to be discussed at the scheduling conference, such as stages of the proceeding that may be expedited. The proposed revisions contemplate that the parties would inform the ALJ of the results of their meeting(s) pursuant to paragraph (a) regarding their proposed discovery plan, including the disclosure of ESI, and that the ALJ would incorporate in the scheduling order a discovery plan that he or she deems appropriate.

Revised paragraph (c)(1) would specify that the ALJ's scheduling order will establish a schedule of proceedings that will permit the evidentiary hearing to commence on the date set by the Commission. The Rule would also state that the Commission may, upon a showing of good cause, order a later date for the evidentiary hearing than the one specified in the complaint. The proposed deadline for the prehearing scheduling conference and order and the more detailed requirements for both are intended to help keep the prehearing proceedings on track and enable the parties to contribute to a high quality record on which the ALJ can base his or her decisions.

Revised paragraph (c)(2) would be revised to authorize the ALJ to extend, upon a showing of good cause, any deadline in the scheduling order other than the date of the evidentiary hearing.

Revised paragraph (f) would state that the ALJ shall hold additional prehearing and status conferences or enter additional orders as may be needed to ''ensure the just and expeditious disposition of the proceeding and to avoid unnecessary cost.''

Section 3.22: Motions.

Revised Rule 3.22(a) would give the Commission the opportunity to rule on motions to strike, motions for summary decision, and prehearing motions to dismiss, but the Commission may refer such motions back to the ALJ. This proposal allows the Commission to decide legal questions and articulate applicable law when the parties raise purely legal issues. In addition, an early ruling on a dispositive motion may expedite resolution of a matter and save litigants resources where the legal issue is the primary dispute. The Commission followed a similar approach in *South Carolina State Board of Dentistry* when it retained jurisdiction to hear motions to dismiss. *See In re South Carolina State Bd. of Dentistry*, 136 F.T.C. 229 (2004). This proposal codifies that approach, giving the Commission more flexibility to determine the law and resolve matters expeditiously.The revised Rule would also provide that rulings on motions to dismiss based on alleged failure to establish a *prima facie* case shall be deferred until after the hearing record is closed. The current provision for a recommended ruling by the ALJ when certifying to the Commission a motion outside his or her authority to decide would be eliminated.

The Commission anticipates that new paragraphs (b) and (e) would expedite cases by providing that proceedings before the ALJ will not be stayed while the Commission considers a motion, unless the Commission orders otherwise, and would require the ALJ to decide motions within 14 days of briefing of the motion.

Re-designated paragraph (c) would impose word count limits on motion papers. Dispositive motions would be limited to 10,000 words (approximately 40 double-spaced pages), and non-dispositive motions would be limited to 2,500 words (approximately 10 double-spaced pages).

Re-designated paragraph (d) would be modified to provide an automatic right of reply in support of dispositive motions. Further, paragraph (d) would state that: ''Reply and surreply briefs to motions other than dispositive motions shall be permitted only in circumstances where the parties wish to draw the ALJ's or the Commission's attention to recent important developments or controlling authority that could not have been raised earlier in the party's principal brief.'' There would also be a 5-day filing deadline for any authorized reply to a motion.

Current paragraph (e) would be eliminated, and current paragraph (f) would be redesignated as paragraph (g).

Section 3.23: Interlocutory appeals.

The revised Rule would continue to permit the parties to seek discretionary review of certain interlocutory rulings by the ALJ. Paragraph (a) would leave unchanged the types of rulings that the parties can ask the Commission to review without a determination by the ALJ that interlocutory review is appropriate. Paragraph (b) would continue to permit interlocutory appeals of other rulings only on a determination that the ruling ''involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy.''

[19] 66 FR 17622 (Apr. 3, 2001).

[20] *See Attorney General's Final Report, supra* note 4, 45–46.

[21] 66 FR 17622 (Apr. 3, 2001).

In order to reduce delay, the revised Rule would require the ALJ to make his or her determination whether the application for review involves such a controlling question within three days after the filing by a party of a request for such a determination. It would eliminate the requirement that the ALJ provide a written justification for his or her determination. The revised Rule would allow the party to file its application for review with the Commission if the ALJ does not make a timely ruling on its request for a determination on the appropriateness of review.

Because the pendency of an application for review may leave a cloud over the proceeding before the ALJ, the revised Rule would also provide a default if the Commission fails to act quickly on the application. The revised Rule would provide that, unless the Commission decides to entertain the appeal within three days after the filing of the application and answer, the request for discretionary review will be deemed to be denied. This would not constitute an affirmance of the ALJ's ruling on the merits. Also, to avoid unnecessary delay, the revised Rule would set shorter deadlines for the filing of applications and answers and, to reduce burdens, impose tighter limits than the current Rule on the length of these filings. The Commission, however, would retain authority to direct additional briefing.

Section 3.24: Summary decisions.

The revised Rule would accommodate the proposed amendment to Rule 3.22 providing that dispositive motions will be decided initially by the Commission unless referred by the Commission to the ALJ. At the same time, it would also require that motions be filed not later than 30 days before the evidentiary hearing, rather than 20 days as in the current Rule. It would extend the deadline for filing affidavits in opposition to a summary decision motion from 10 to 14 days. Because the moving party may have had months to prepare its motion and supporting papers, the revised Rule would allow slightly more time than the current Rule for the opposing party to compile, authenticate, and perform the other research necessary to respond. Finally, the proposed Rule would eliminate the 30-day deadline for ruling on the motion but allow the Commission to set a deadline for decision when referring a summary decision motion, or any other dispositive motion, to the ALJ. In any event, under revised Rule 3.22(b), the filing of a motion under this Rule would not stay the proceeding before the ALJ.

Rule 3.26: Motions following denial of preliminary injunctive relief.

The Commission adopted the current version of Rule 3.26 in connection with a 1995 policy statement, which explained the process the Commission follows in deciding whether to pursue administrative litigation of a merger case following the denial of a preliminary injunction.[22] The statement noted that the ''Commission was created in part because Congress believed that a special administrative agency would serve the public interest by helping to resolve complex antitrust questions'' and that it was expected that ''an administrative agency was especially suited to resolving difficult antitrust questions, and that the FTC should be the principal fact finder in the process.''[23]

According to the statement, ''[i]n any given case, the evidence, arguments, and/or opinion from the preliminary injunction hearing may, or may not, suggest that further proceedings would be in the public interest. The Commission's guiding principle is that the determination whether to proceed in administrative litigation following the denial of a preliminary injunction and the exhaustion or expiration of all avenues of appeal must be made on a case-by-case basis.''[24] The Commission adopted Rule 3.26 to provide a formal mechanism for making this determination.

The Commission proposes to revise provisions in the Rule that grant an automatic withdrawal from adjudication of the Part 3 case upon the filing of a motion to withdraw from adjudication or an automatic stay upon the filing of a motion to dismiss. An automatic withdrawal from adjudication or stay might well be appropriate if the denial of preliminary injunctive relief typically warranted terminating the Part 3 case. But the Part 3 proceeding is the suitable forum for deciding the merits, *see FTC v. Whole Foods Market, Inc.,* 533 F.3d 869, 875–76 (D.C. Cir. 2008) (''[A] district court must not require the FTC to prove the merits, because, in a [5 U.S.C.] § 53(b) preliminary injunction proceeding, a court 'is not authorized to determine whether the antitrust laws . . . are about to be violated.' That responsibility lies with the FTC.'') (quoting *FTC v. Food Town Stores, Inc.,* 539 F.2d 1339, 1342 (4th Cir. 1976)). Thus, the Commission believes the norm should be that the Part 3 case can proceed even if a court denies preliminary relief. If that is the norm, routine withdrawals from adjudication or stays of proceedings before the ALJ could unnecessarily delay the typical Part 3 case in which ancillary relief has been denied. The proposed Rule would allow the Part 3 case to proceed unless the Commission determines, on the facts of the particular case, that a withdrawal or stay is appropriate.

The revised Rule would also make explicit that a motion to dismiss or withdraw may be filed only after the Commission has an opportunity to seek reconsideration and appellate review of a denial of injunctive relief.[25] The revision would also prescribe the same word count limits for memoranda supporting or opposing these motions as for motions to dismiss filed under Rule 3.22(a) and eliminate the special limitation for printed filings.

Subpart D—Discovery; Compulsory Process

Section 3.31: General discovery provisions.

Paragraph (b) of Rule 3.31 would be amended to specify that the documents to be disclosed as part of the parties' mandatory initial disclosures include declarations or affidavits, as well as transcripts of investigational hearings and depositions, and that initial disclosures also include ESI. The reference to ESI would update the term ''data compilations'' and would parallel the 2006 amendment to Fed. R. Civ. Proc. 26(a)(1)(B). The proposed limitations on disclosure of ESI in paragraph (c)(3) follow Fed. R. Civ. P. 26(b)(2)(B). In particular, the proposed provision in paragraph (c)(3) that a party need not provide discovery of ESI from sources that the party identifies as not reasonably accessible because of undue burden or cost is anticipated to reduce delays and costs to the parties.

As discussed below, the Commission proposes to treat expert discovery in a new Rule 3.31A, and therefore the provisions in paragraphs (b) and (c) of Rule 3.31 governing expert discovery would be eliminated.

The proposed changes to paragraph (c)(2) would limit the scope of discovery for complaint counsel, respondents, and third parties who receive a discovery request. Complaint counsel would only need to search for materials that were collected or reviewed in the course of the investigation of the matter or prosecution of the case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter, including

[22] 60 FR 39741 (Aug. 3, 1995).

[23] *Id.*

[24] *Id.*

[25] *See In re Equitable Resources, Inc.*, No. 9322, 2007 F.T.C. LEXIS 49 (May 30, 2007); 60 FR 39640, 39641 (Aug. 3, 1995).

the Bureau of Economics. The ALJ could authorize for good cause additional discovery of materials in the possession, custody, or control of those Bureaus or Offices, or authorize other discovery pursuant to § 3.36. Neither complaint counsel, respondent, nor a third party receiving a discovery request under these rules would be required to search for materials generated and transmitted between an entity's counsel (including counsel's legal staff or in-house counsel) and not shared with anyone else, or between complaint counsel and non-testifying Commission employees, unless the ALJ determines there is good cause to provide such materials. These materials are frequently duplicative of materials held by the parties and moreover, are almost always protected by the deliberative process or attorney-client privileges, or as work product.

Paragraph (d) would be revised to direct the ALJ to issue a standard protective order (provided as an appendix to this Rule) governing the use of confidential materials obtained in discovery. The Commission believes a standard order would eliminate the delay resulting from negotiations and disputes over case-specific orders and improve quality and reduce agency costs by ensuring that discovery materials are handled uniformly and in a manner that is fully consistent with the FTC's statutory obligations with respect to materials it receives from private parties.

Paragraph (h), as revised, would address the resources used to avoid the risk of privilege and work product waiver, which add to the costs and delay of discovery. The risk of waiver, and the time and effort needed to avoid it, are aggravated when the party is producing ESI. The revised Rule would limit the risk of waivers resulting from inadvertent disclosures as long as parties take reasonable measures to protect privileged materials. The Rule would not address obligations imposed by state bar rules on attorneys who receive materials that appear to be subject to a privilege claim.

The FTC Act requires the Commission to protect ''privileged or confidential'' information.[26] By providing that the Commission would not treat genuinely inadvertent disclosures as waivers of privilege claims, this proposed Rule, together with the relevant provisions of the FTC Act, is intended to assure respondents and third parties alike that if otherwise privileged materials end up in the hands of the FTC, they will not readily find their way into the public record. In this regard, the protective order would expressly include privileged information in the order's definition of ''confidential materials'' subject to the protective order.

Paragraph 3.31(i), as revised, would prohibit the filing of discovery materials with the Office of the Secretary, the ALJ, or otherwise providing such materials to the Commission, except when used to support or oppose a motion or to offer as evidence. This proposed change is similar to Fed. R. Civ. P. 5(d), which generally prohibits the filing of discovery material unless ordered by the court or used in the proceeding.

The revised Rule would also make technical revisions to the current Rule.

Section 3.31A: Expert discovery.

New Rule 3.31A would mandate a schedule for the disclosure of potential expert witnesses, the production of expert reports, and the start and completion of expert depositions. This Rule would incorporate and revise certain provisions now contained in current Rule 3.31(b) and (c). The scheduling provisions are intended to provide for expert discovery in a more orderly and expeditious manner than what has occurred in past proceedings.

The Rule would not permit expert discovery to begin until fact discovery is essentially completed. The Commission believes that discovery of experts, including the production of expert reports, will be less than thorough if facts potentially relevant to their opinions have yet to be discovered. The Rule would also limit the number of expert witnesses to 5 per side, but would allow a party to seek leave to call additional expert witnesses in extraordinary circumstances. It has been the Commission's experience that 5 expert witnesses per side is sufficient for each party to present its case.

The Rule would require that each expert who will testify at the evidentiary hearing produce a written report, thereby eliminating the ALJ's authority to dispense with them. Preparation of a written expert report is a common requirement in federal courts and, given the Commission's goal of expedited proceedings, should be required here during the discovery period to allow the parties more effective and targeted discovery.

The Rule would provide that complaint counsel submit their initial expert reports first, followed by respondents' expert reports. Respondents' reports, of course, can rebut material in complaint counsel's initial expert reports. The revised Rule would also explicitly authorize complaint counsel to call rebuttal experts and, if complaint counsel exercises this option, would require the experts to prepare rebuttal expert reports. Thus, the Rule would allow complaint counsel's experts an opportunity to respond to respondents' expert reports.

The Rule would also exclude from expert discovery anyone who has been retained or specially employed by another party in anticipation of litigation or preparation for hearing unless he or she is expected to be called as a witness at the hearing, so as to prevent the discovery of the unpublished work product of non-testifying experts, particularly where such materials are proprietary and highly confidential. The discovery of such marginally relevant materials can be a major distraction from the central case and can have an adverse effect on the willingness of non-testifying experts to consult in the future.

Section 3.33: Depositions.

Paragraph (b) would be added to allow the ALJ, upon a party's motion, to prevent the taking of a deposition if the deposition would not meet the scope of discovery standard under Rule 3.31(c) or if the value of the deposition would be outweighed by considerations of unfair prejudice, confusion of the issues, evidence that would be misleading, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence (as set forth under Rule 3.43(b)). Paragraph (b) would also clarify that the fact that a witness testifies in an investigative hearing does not preclude the deposition of that witness.

Paragraph (c) would be revised to stop the practice of filing notices of deposition with the Office of the Secretary, the ALJ or otherwise providing such notices to the Commission, except as provided in proposed Rule 3.31(i). Such notices serve no purpose for the ALJ or the agency, and receipt of these notices causes unnecessary processing costs for the Commission.

Revised Rule 3.43, as discussed below, would provide for the admission of hearsay evidence in the evidentiary hearing if the evidence is ''relevant, material, and bears satisfactory indicia of reliability so that its use is fair.'' If meeting this standard, depositions, investigational hearings, and other prior testimony may be admitted. Consistent with this proposed revision, current Rule 3.33(g)(1) would be eliminated because it contains hearsay-based limitations for the use of depositions. Paragraphs (g)(2) and (3) would be renumbered accordingly.

[26] FTC Act, 6(f), 21(d)(1)(B), 15 U.S.C. 46(f), 57b–2(d)(1)(B).

Section 3.34: Subpoenas.

Paragraphs (a) and (b), as amended, would authorize counsel for a party to sign and issue a subpoena on a form provided by the Secretary. These revisions are intended to expedite the commencement of hearings by speeding the issuance of discovery and hearing subpoenas. The definition of ''documents'' would also be revised to be parallel to Fed. R. Civ. P. 45(c)(1).

Revisions to paragraph (c) would reflect revised Rule 3.36, discussed below, which would require a special showing of need for subpoenas directed to the offices of the Commissioners, the General Counsel, Bureaus and Offices not involved in the matter, the ALJs, or the Secretary.

Section 3.35: Interrogatories to parties.

New paragraph (a)(3) would provide that interrogatories should not be filed with the Office of the Secretary, the ALJ or otherwise provided to the Commission except as provided in proposed Rule 3.31(i).

Paragraph (b)(2), as revised, would eliminate the requirement that a party seek an order from the ALJ when not answering a contention interrogatory before the end of discovery. If a party poses a contention interrogatory that is capable of being answered at an earlier time, there is no reason it could not move to compel a more expeditious response.

Section 3.36: Applications for subpoenas for records of or appearances by certain officials or employees of the Commission or officials or employees of governmental agencies other than the Commission, and subpoenas to be served in a foreign country.

Paragraph (a) currently requires a special showing of need for subpoenas to other agencies and foreign subpoenas. The revised Rule would require a special showing of need for subpoenas directed to the offices of the Commissioners, the General Counsel, Bureaus and Offices not involved in the matter, the ALJs, and the Secretary. None of these offices is likely to possess relevant, discoverable information that is not available from other sources. Given the lack of useful additional information likely to be available from these offices, the burden (and delay) of searches for responsive records and the creation of privilege logs should not be imposed without strong justification. These revisions would reduce the cost and time devoted to searches for information that is likely to be privileged or that is unlikely to lead to the discovery of admissible evidence.

The revisions to paragraph (b)(3) would require a showing of ''compelling need'' as the corresponding standard for witness testimony. Because the Commission is proposing to revise Rule 3.34 to eliminate specific showings for hearing subpoenas, the reference to that Rule would be eliminated from the first sentence of paragraph (b). The reference to Rule 3.37 would be moved to a new paragraph (b)(5).

Section 3.37: Production of documents, electronically stored information, and any tangible thing; access for inspection and other purposes.

The existing Rule substantially follows Fed. R. Civ. P. 34. The revised Rule would include the current federal rule's provisions on electronic discovery. The revised Rule would also provide that requests under this section not be filed with the Office of the Secretary, the ALJ or otherwise provided to the Commission, except as provided in proposed Rule 3.31(i).

Section 3.38: Motion for order compelling disclosure or discovery; sanctions.

The revised Rule would impose short deadlines for responses to and rulings on motions to compel. It would impose a 2,500 word limit, which translates into approximately 10 double-spaced pages, for motions and answers. This limit should be sufficient to enable parties to address several discovery issues in one filing.

The revised Rule would consolidate the sanctions for failure to comply with discovery and disclosure requirements and add as a sanction the inability to call a witness who was not disclosed under Rule 3.31(b) or an expert not disclosed under proposed Rule 3.31A.

Section 3.38A: Withholding requested material.

The revised Rule would modify the existing requirement that a privilege/work-product log must always contain specific information for each item being withheld. The Commission intends to substitute the more flexible requirement in Fed. R. Civ. P. 26(b)(5)(A) that the schedule of withheld items ''describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.'' This proposed requirement would permit parties to describe withheld items by categories, but only if the description ''will enable other parties to assess the claim.'' Unless such descriptions are sufficient, item-by-item descriptions would be required.

The revised Rule would also clarify that the log need not describe any material outside the scope of the duty to search set forth in revised Rule 3.31(c)(2) except to the extent that the ALJ has authorized additional discovery as provided in that Rule. These exclusions, if adopted, will reduce the burden and time devoted to preparing a detailed log without eliminating information about materials most likely to be relevant to the litigation.

Section 3.39: Orders requiring witnesses to testify or provide other information and granting immunity.

The Commission is proposing technical revisions to the existing Rule.

All in all, the proposed revisions to the discovery Rules are designed to encourage the parties to cooperate in the discovery process, ''automate'' the discovery process to the greatest extent possible, and provide effective sanctions against those who violate a discovery obligation. The Commission's expectation is that the revised Rules would work to improve the quality of the discovery process and would ultimately reduce the costs and delays that are incurred when parties engage in unnecessary gamesmanship. For example, the Commission believes that the sanction of prohibiting a party from calling a fact or expert witness who should have been disclosed earlier would reduce the need for last-minute discovery that could delay the hearing and thereby eliminate the extra costs associated with such discovery and improve the quality of the discovery process.

Subpart E—Hearings

Section 3.41: General hearing rules.

In order to expedite proceedings, revised Rule 3.41(b) would require that the evidentiary hearing commence on the date set in the notice accompanying the complaint. It also would limit the length of the hearing to 210 hours, the equivalent of 30 seven-hour trial days, unless extended by the Commission for good cause, and establish reasonable time allocations for both sides.

Section 3.42: Presiding officials.

Revised Rule 3.42(a) would make explicit provision for the Commission retaining jurisdiction over a matter during some or all of the prehearing proceedings and designating one or more Commissioners to preside. The Commission has followed this course in several recent cases. The APA, 5 U.S.C. 556(b), allows the agency itself or one or

more of its members to preside, and the Commission can see no reason why the Commission or an individual Commissioner may not preside over the beginning phases of the proceeding even where the Commission or the individual Commissioner does not preside over the hearing or issue the initial decision. In appropriate cases, early Commission involvement has the potential for improving the quality of the final product, expediting the proceeding, and ultimately reducing the costs of the litigation.

Section 3.43: Evidence.

The Commission proposes to amend this Rule to define hearsay evidence and to provide expressly in paragraph (b) for the use and admission of hearsay evidence in Commission proceedings if the evidence ''is relevant, material, and bears satisfactory indicia or reliability so that its use is fair.'' The existing Rule states that ''[r]elevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, and unreliable evidence shall be excluded.'' This modification does not represent a change in the current rule; rather it emphasizes that the stricter hearsay rules in the Federal Rules of Evidence do not determine admissibility of evidence in administrative litigation. The ALJ, in the first place, and ultimately the Commission must independently assess the reliability of the evidence itself.

Administrative agencies like the FTC ''have never been restricted by the rigid rules of evidence,''[27]and should evaluate the admissibility of hearsay evidence based on whether ''it bear[s] satisfactory indicia of reliability . . . [is] probative and its use fundamentally fair.''[28] The ALJ, and on appeal the Commission, are capable of assessing the reliability and weight to be given hearsay evidence by, for example, determining the independence or possible bias of an out-of-court declarant, the context in which the hearsay material was created, whether the statement was sworn to, and whether it is corroborated or contradicted by other forms of direct evidence.

In that regard, proposed paragraph (b) would provide that depositions, investigational hearings, and prior testimony in Commission and other proceedings shall be admissible even if they are or contain hearsay, provided that the testimony is otherwise sufficiently reliable and probative. The revised Rule would also make clear that relevant statements or testimony by a party-opponent are admitted since such statements are not hearsay.

The Commission believes that the revision regarding hearsay evidence will improve the quality of Commission decisions by enabling the ALJ and the Commission to decide cases with a more complete record, which would not exclude relevant, material, and reliable evidence, including prior testimony, merely because it is hearsay.

Proposed new paragraph (c), which is analogous to Fed. R. Evid. 902(11), is intended to facilitate the admissibility of third party documents by self-authentication through a written declaration of the third party document custodian.

Proposed new paragraph (d)(1) would adopt the standard for the presentation of evidence at an oral hearing under 5 U.S.C. 556(d), including the right to present both sworn oral and documentary evidence, to offer rebuttal evidence, and to conduct reasonable cross-examination. Of particular note, this paragraph would permit sufficient ''cross-examination as, in the discretion of the Commission or the ALJ, may be required for a full and true disclosure of the facts,'' a standard that does not impose an absolute or unlimited right of cross-examination.[29]

Finally, re-designated paragraph (f) would define what constitutes ''official notice.'' The current Rule does not define official notice or what constitutes such notice. Further, the revised Rule would provide that a party may controvert an officially noticed fact either by opposing the other party's request to do so or after it has been noticed by the ALJ or the Commission.

Other paragraphs in the current Rule would be re-designated.

Section 3.44: Record.

Paragraph (a) would be amended to require that witness testimony be preserved as a digital video recording that would be made part of the official record. Video recordings are permitted and frequently taken in depositions,[30] but federal courts do not typically record proceedings. Section 5(b) of the FTC Act does not preclude video recording testimony, merely requiring that the ''testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission.'' The purpose of the proposed Rule revision is to provide a record for the Commissioners who are not present at the hearing, but are ultimately responsible for deciding the outcome of the case, to be able to make an independent assessment of the demeanor of the witnesses when that is appropriate. Courts have recognized the ''added value of demeanor evidence'' from video recording.[31] The Commission believes that the video recording requirement would improve the quality of Commission decisions whenever witness demeanor is a significant issue.

Paragraph (c), as revised, would delete the word ''immediately'' at the beginning of the first sentence to allow the Commission or ALJ to provide the parties with three business days to review the record to determine if it is complete or needs to be supplemented.

Section 3.45: In camera orders.

Paragraph (b), as revised, would add a paragraph making clear that parties have no obligation to file or provide *in camera* versions of filings with sensitive materials with anyone other than opposing counsel and the ALJ during the proceedings, as well as with the Commission or federal courts during any appeals.

Section 3.46: Proposed finding, conclusions, and order.

Revised paragraph (a), if adopted, would expressly provide for the simultaneous filing of proposed findings of fact, conclusions of law, and supporting briefs within 21 days of the close of the hearing record, and the filing of optional proposed reply findings within 10 days of the filing of the initial proposed findings. The current Rule does not impose any deadlines or specify the order of these filings. This change, if adopted, is expected to expedite the post-hearing phase.

Subpart F—Decision

Section 3.51: Initial decision.

Paragraph (a) would be amended to establish the deadline for issuing the

[27] *FTC v. Cement Inst.*, 333 U.S. 683, 705–06 (1948).

[28] *Calhoun v. Bailar*, 626 F.2d 145, 148 (9th Cir. 1980); *see also Richardson v. Perales*, 402 U.S. 389, 407–08 (1971); *J.A.M. Builders, Inc. v. Herman*, 233 F.3d 1350, 1354 (11th Cir. 2000) (hearsay admissible in administrative proceedings if ''reliable and credible''); 5 U.S.C. 556(d) (APA provides that ''[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.'').

[29] *See, e.g.*, *Citizens Awareness Network, Inc. v. United States*, 391 F.3d 338, 351 (1st Cir. 2004); *Central Freight Lines, Inc. v. United States*, 669 F.2d 1063 (5th Cir. 1982).

[30] *See, e.g.*, Fed. R. Civ. P. 30(b)(3)(A).

[31] *See FTC v. Tarriff*, No. 08–MC–217, 2008 WL 2230062, at *5 (D.D.C. June 2, 2008).

initial decision by the filing of proposed findings and conclusions (and supporting exhibits) rather than by the closing of the hearing record. The current Rule requires that the initial decision be filed within 90 days after the close of the record. The revised Rule would require that the initial decision be filed within 70 days of the last filed proposed findings and conclusions (or 85 days of the closing of the hearing record if the parties waive filing proposed findings and conclusions).

The revised Rule would maintain the over-all requirement that the initial decision be issued within one year after the issuance of the complaint. The revised Rule, however, would no longer authorize the ALJ to grant consecutive 60-day extensions upon a finding of ''extraordinary circumstances.'' Instead, only the Commission could grant extensions if it finds there are ''extraordinary circumstances and if appropriate in the public interest.'' The Commission believes that eliminating the authority of ALJs to grant extensions of the one-year deadline would permit the Commission to prevent protracted delays, while still providing ample time for the ALJ to review the evidence and issue the initial decision.

New paragraph (c)(2) would require that the initial decision be filed in a word processing format that is accessible to the Commission on review.

Section 3.52: Appeal from initial decision.

Paragraphs (b) and (c) would be amended to reduce the word limit for the principal appellate briefs from 18,750 words to 14,000 words (approximately 55 double-spaced pages) to minimize unnecessarily lengthy briefs. The Commission anticipates that the shortened limits would lead to more focused arguments. The proposed length is the same as that permitted in Fed. R. App. P. 32(a)(7). Paragraph (c) would also be revised to reduce the word limit for cross-appeal briefs to 16,500 words, the same as in Fed. R. App. P. 28.1(e)(2).

While lengthier appellate briefs could be justified by the Commission's obligation to review the record *de novo*, this is offset by the fact that the Commission has ready access to the briefs and proposed findings submitted by the parties to the ALJ. Further, parties will not be prejudiced because they may request permission to extend the word count limits, which may be appropriate where the case involves a particularly large record or complex legal issues. However, as noted in paragraph (k), the Commission will not lightly permit such extensions.

Paragraph (d) would be amended to reduce the length of reply briefs to half of the principals' briefs, or 7,000 words, consistent with Fed. R. App. P. 32(a)(7). This paragraph would also make explicit that parties cannot raise new arguments or matters in reply briefs that could have been raised earlier, based on concerns that reply briefs have often gone beyond ''a rebuttal of matters'' in the appellee's brief.

Paragraph (h) would be revised by striking the last two sentences as unnecessary.

Paragraph (j) would be amended to impose a word count limit on *amicus* briefs to ''no more than one-half the maximum length authorized by these rules for a party's principal brief,'' consistent with the approach taken by Fed. R. App. P. 29(d).

Finally, revised paragraph (k) would specify the contents of the brief that will count toward the word count limit, similar to that imposed by Fed. R. App. P. 32(a)(7)(B)(iii).

Rule 4.3: Time.

Revised Rule 4.3(b), if adopted, would specify that the ALJ may extend a time period set by a Commission order only if the order expressly authorizes the ALJ to do so. It would also add time limits regarding motions directed to the Commission to the list of extensions that only the Commission may grant. The revised Rule would also clarify that the ALJ may not enlarge any deadline that a rule specifically authorizes only the Commission to extend.

III. Invitation to Comment

The Commission invites interested members of the public to submit written comments addressing the issues raised above. Such comments must be filed by November 6, 2008, and must be filed in accordance with the instructions in the **ADDRESSES** section of this document.

IV. Proposed Rule Revisions

List of Subjects in 16 CFR Part 3

Administrative practice and procedure.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

■ For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend Title 16, Chapter 1, Subchapter A of the Code of Federal Regulations, parts 3 and 4, as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 3.1 to read as follows:

§ 3.1 Scope of the rules in this part.

The rules in this part govern procedure in formal adjudicative proceedings. To the extent practicable and consistent with requirements of law, the Commission's policy is to conduct such proceedings expeditiously. In the conduct of such proceedings the Administrative Law Judge and counsel for all parties shall make every effort at each stage of a proceeding to avoid delay. Except as otherwise provided by law, the Commission, at any time, or the Administrative Law Judge at any time prior to the filing of his or her initial decision, may shorten any time limit prescribed by these Rules of Practice, provided that the shortened time limit would not unfairly prejudice the rights of any party.

■ 3. Revise § 3.2 to read as follows:

§ 3.2 Nature of adjudicative proceedings.

Adjudicative proceedings are those formal proceedings conducted under one or more of the statutes administered by the Commission which are required by statute to be determined on the record after opportunity for an agency hearing. The term includes hearings upon objections to orders relating to the promulgation, amendment, or repeal of rules under sections 4, 5 and 6 of the Fair Packaging and Labeling Act, but does not include rulemaking proceedings up to the time when the Commission determines under § 1.26(g) of this chapter that objections sufficient to warrant the holding of a public hearing have been filed. The term also includes proceedings for the assessment of civil penalties pursuant to § 1.94 of this chapter. The term does not include other proceedings such as negotiations for and Commission consideration of the entry of consent orders; investigational hearings as distinguished from proceedings after the issuance of a complaint; requests for extensions of time to comply with final orders or other proceedings involving compliance with final orders; proceedings for the promulgation of industry guides or trade regulation rules; or the promulgation of substantive rules and regulations.

■ 4. Revise § 3.11 to read as follows:

§ 3.11 Commencement of proceedings.

(a) *Complaint.* Except as provided in § 3.13, an adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint.

(b) *Form of complaint.* The Commission's complaint shall contain the following:

(1) Recital of the legal authority and jurisdiction for institution of the proceeding, with specific designation of the statutory provisions alleged to have been violated;

(2) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the type of acts or practices alleged to be in violation of the law;

(3) Where practical, a form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint; and

(4) Notice of the specific date, time and place for the evidentiary hearing.

Unless a different date is determined by the Commission, the date of the evidentiary hearing shall be 5 months from the date of a complaint issued pursuant to sections 7 and 11(b) of the Clayton Act, 15 U.S.C. 18 and 21(b), and 8 months from the date of issuance of a complaint in all other proceedings.

■ 5. Revise § 3.12 to read as follows:

§ 3.12 Answer.

(a) *Time for filing.* A respondent shall file an answer within 14 days after being served with the complaint.

(b) *Content of answer.* An answer shall conform to the following:

(1) *If allegations of complaint are contested.* An answer in which the allegations of a complaint are contested shall contain:

(i) A concise statement of the facts constituting each ground of defense;

(ii) Specific admission, denial, or explanation of each fact alleged in the complaint or, if the respondent is without knowledge thereof, a statement to that effect. Allegations of a complaint not thus answered shall be deemed to have been admitted.

(2) *If allegations of complaint are admitted.* If the respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that he or she admits all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such an answer, the respondent may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46.

(c) *Default.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of the respondent's right to appear and contest the allegations of the complaint and to authorize the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

■ 6. Revise § 3.21 to read as follows:

§ 3.21 Prehearing procedures.

(a) *Meeting of the parties before scheduling conference.* As early as practicable before the prehearing scheduling conference described in paragraph (b) of this section, but in any event no later than 5 days after the answer is filed by the last answering respondent, counsel for the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. The parties shall also agree, if possible, on (1) a proposed discovery plan specifically addressing a schedule for depositions of fact witnesses, the production of documents and electronically stored information, and the timing of expert discovery pursuant to § 3.31A. The parties' agreement regarding electronically stored information should include the scope of and a specified time period for the exchange of such information that is subject to § § 3.31(b)(2), 3.31(c), and 3.37(a), and the format for the disclosure of such information, consistent with § 3.31(c)(3) and § 3.37(c); (2) a preliminary estimate of the time required for the evidentiary hearing; and (3) any other matters to be determined at the scheduling conference.

(b) *Scheduling conference.* Not later than 10 days after the answer is filed by the last answering respondent, the Administrative Law Judge shall hold a scheduling conference. At the scheduling conference, counsel for the parties shall be prepared to address: (1) their factual and legal theories; (2) the current status of any pending motions; (3) a schedule of proceedings that is consistent with the date of the evidentiary hearing set by the Commission; (4) steps taken to preserve evidence relevant to the issues raised by the claims and defenses; (5) the scope of anticipated discovery, any limitations on discovery, and a proposed discovery plan, including the disclosure of electronically stored information; (6) issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial, and any request to bifurcate issues, claims or defenses; and (7) other possible agreements or steps that may aid in the just and expeditious disposition of the proceeding and to avoid unnecessary cost.

(c) *Prehearing scheduling order.* (1) Not later than 2 days after the scheduling conference, the Administrative Law Judge shall enter an order that sets forth the results of the conference and establishes a schedule of proceedings that will permit the evidentiary hearing to commence on the date set by the Commission, including a plan of discovery that addresses the deposition of fact witnesses, timing of expert discovery, and the production of documents and electronically stored information, dates for the submission and hearing of motions, the specific method by which exhibits shall be numbered or otherwise identified and marked for the record, and the time and place of a final prehearing conference. The Commission may, upon a showing of good cause, order a later date for the evidentiary hearing than the one specified in the complaint.

(2) The Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing. Such motion shall set forth the total period of extensions, if any, previously obtained by the moving party. In determining whether to grant the motion, the Administrative Law Judge shall consider any extensions already granted, the length of the proceedings to date, the complexity of the issues, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner. The Administrative Law Judge shall not rule on *ex parte* motions to extend the deadlines specified in the scheduling order, or modify such deadlines solely upon stipulation or agreement of counsel.

(d) *Meeting prior to final prehearing conference.* Counsel for the parties shall meet before the final prehearing conference described in paragraph (e) of this section to discuss the matters set forth therein in preparation for the conference.

(e) *Final prehearing conference.* As close to the commencement of the evidentiary hearing as practicable, the Administrative Law Judge shall hold a final prehearing conference, which counsel shall attend in person, to submit any proposed stipulations as to law, fact, or admissibility of evidence,

exchange exhibit and witness lists, and designate testimony to be presented by deposition. At this conference, the Administrative Law Judge shall also resolve any outstanding evidentiary matters or pending motions (except motions for summary decision) and establish a final schedule for the evidentiary hearing.

(f) *Additional prehearing conferences and orders.* The Administrative Law Judge shall hold additional prehearing and status conferences or enter additional orders as may be needed to ensure the just and expeditious disposition of the proceeding and to avoid unnecessary cost. Such conferences shall be held in person to the extent practicable.

(g) *Public access and reporting.* Prehearing conferences shall be public unless the Administrative Law Judge determines in his or her discretion that the conference (or any part thereof) shall be closed to the public. The Administrative Law Judge shall have discretion to determine whether a prehearing conference shall be stenographically reported.

■ 7. Revise § 3.22 to read as follows:

§ 3.22 Motions.

(a) *Presentation and disposition.* Motions filed under § 3.26 or § 4.17 shall be directly referred to and ruled on by the Commission. Motions to dismiss filed before the evidentiary hearing, motions to strike, and motions for summary decision shall be directly referred to the Commission and shall be ruled on by the Commission, unless the Commission in its discretion refers the motion to the Administrative Law Judge. If the Commission refers the motion to the Administrative Law Judge, it may set a deadline for the ruling by the Administrative Law Judge, and a party may seek review of the ruling of the Administrative Law Judge in accordance with § 3.23. During the time a proceeding is before an Administrative Law Judge, all other motions shall be addressed to and ruled upon, if within his or her authority, by the Administrative Law Judge. The Administrative Law Judge shall certify to the Commission a motion to disqualify filed under § 3.42(g) if the Administrative Law Judge does not disqualify himself or herself within 10 days. The Administrative Law Judge shall certify to the Commission forthwith any other motion upon which he or she has no authority to rule. Rulings containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f). When a motion to dismiss is made at the close of the evidence offered in support of the complaint based upon an alleged failure to establish a prima facie case, the Administrative Law Judge shall defer ruling thereon until immediately after all evidence has been received and the hearing record is closed. All written motions shall be filed with the Secretary of the Commission, and all motions addressed to the Commission shall be in writing. The moving party shall also provide a copy of its motion to the Administrative Law Judge at the time the motion is filed with the Secretary.

(b) *Pendency of proceedings.* A motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders.

(c) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words. These word count limitations include headings, footnotes and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). Documents that fail to comply with these provisions shall not be filed with the Secretary. Motions must also include the name, address, telephone number, fax number, and e-mail address (if any) of counsel and attach a draft order containing the proposed relief. If a party includes in a motion information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the party shall file 2 versions of the motion in accordance with the procedures set forth in § 3.45(e). The party shall mark its confidential filings with brackets or similar conspicuous markings to indicate the material for which it is claiming confidential treatment. The time period specified by § 3.22(d) within which an opposing party may file an answer will begin to run upon service on that opposing party of the confidential version of the motion.

(d) *Responses.* Within 10 days after service of any written motion, or within such longer or shorter time as may be designated by the Administrative Law Judge or the Commission, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. If an opposing party includes in an answer information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the opposing party shall file 2 versions of the answer in accordance with the procedures set forth in § 3.45(e). The moving party shall have no right to reply, except for dispositive motions or as otherwise permitted by the Administrative Law Judge or the Commission. Reply and surreply briefs to motions other than dispositive motions shall be permitted only in circumstances where the parties wish to draw the Administrative Law Judge's or the Commission's attention to recent important developments or controlling authority that could not have been raised earlier in the party's principal brief. The reply may be conditionally filed with the motion seeking leave to reply. Any reply to a dispositive motion, or any permitted reply to any other motion, shall be filed within 5 days after service of the last answer to that motion.

(e) *Rulings on motions.* Unless otherwise provided by a relevant rule, the Administrative Law Judge shall rule on motions within 14 days after the filing of all motion papers authorized by this section. The Commission, for good cause, may extend the time allowed for a ruling.

(f) *Motions for extensions.* The Administrative Law Judge or the Commission may waive the requirements of this section as to motions for extensions of time; however, the Administrative Law Judge shall have no authority to rule on ex parte motions for extensions of time.

(g) *Statement.* Each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), each motion for sanctions pursuant to § 3.38(b), and each motion for enforcement pursuant to § 3.38(c) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties

participating in each such conference. Unless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue.

■ 8. Revise § 3.23 to read as follows:

§ 3.23 Interlocutory appeals.

(a) *Appeals without a determination by the Administrative Law Judge.* The Commission may, in its discretion, entertain interlocutory appeals where a ruling of the Administrative Law Judge:

(1) Requires the disclosure of records of the Commission or another governmental agency or the appearance of an official or employee of the Commission or another governmental agency pursuant to § 3.36, if such appeal is based solely on a claim of privilege: Provided, that the Administrative Law Judge shall stay until further order of the Commission the effectiveness of any ruling, whether or not appeal is sought, that requires the disclosure of nonpublic Commission minutes, Commissioner circulations, or similar documents prepared by the Commission, individual Commissioner, or the Office of the General Counsel;

(2) Suspends an attorney from participation in a particular proceeding pursuant to § 3.42(d); or

(3) Grants or denies an application for intervention pursuant to the provisions of § 3.14. Appeal from such rulings may be sought by filing with the Commission an application for review within 3 days after notice of the Administrative Law Judge's ruling. An answer may be filed within 3 days after the application for review is filed. The Commission upon its own motion may enter an order staying compliance with a discovery demand authorized by the Administrative Law Judge pursuant to § 3.36 or placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues which will be considered and will make provision for the filing of memoranda of law if deemed appropriate by the Commission.

(b) *Other interlocutory appeals.* A party may request the Administrative Law Judge to determine that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy. An answer may be filed within 3 days after the application for review is filed. The Administrative Law Judge shall issue a ruling on the request for determination within 3 days. The party may file an application for review with the Commission within 1 day after notice that the Administrative Law Judge has issued the requested determination or 1 day after the deadline has passed for the Administrative Law Judge to issue a ruling on the request for determination and the Administrative Law Judge has not issued his or her ruling.

(c) The application for review shall attach the ruling from which appeal is being taken and any other portions of the record on which the moving party relies. Neither the application for review nor the answer shall exceed 2,500 words. This word count limitation includes headings, footnotes and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). The Commission may order additional briefing on the application.

(d) Unless the Commission, within 3 days after the filing of an application for review, decides to entertain the appeal, the application shall be deemed to be denied.

(e) *Proceedings not stayed.* Application for review and appeal hereunder shall not stay proceedings before the Administrative Law Judge unless the Judge or the Commission shall so order.

■ 9. Revise § 3.24 to read as follows:

§ 3.24 Summary decisions.

(a) *Procedure.* (1) Any party may move, with or without supporting affidavits, for a summary decision in the party's favor upon all or any part of the issues being adjudicated. The motion shall be accompanied by a separate and concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Counsel in support of the complaint may so move at any time after 20 days following issuance of the complaint and any respondent may so move at any time after issuance of the complaint. Any such motion by any party, however, shall be filed in accordance with the scheduling order issued pursuant to § 3.21, but in any case at least 30 days before the date fixed for the hearing.

(2) Any other party may, within 14 days after service of the motion, file opposing affidavits. The opposing party shall include a separate and concise statement of those material facts as to which the opposing party contends there exists a genuine issue for trial, as provided in § 3.24(a)(3). The parties may file memoranda of law in support of, or in opposition to, the motion consistent with § 3.22(c). If a party includes in any such brief or memorandum information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the party shall file 2 versions of the document in accordance with the procedures set forth in § 3.45(e). If the Commission (or, when appropriate, the Administrative Law Judge) determines that there is no genuine issue as to any material fact regarding liability or relief, it shall issue a final decision and order. In the event that the motion has been referred to the Administrative Law Judge, such determination by the Administrative Law Judge shall constitute his or her initial decision and shall conform to the procedures set forth in § 3.51(c). A summary decision, interlocutory in character and in compliance with the procedures set forth in § 3.51(c), may be rendered on the issue of liability alone although there is a genuine issue as to relief.

(3) Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Commission (or, when appropriate, the Administrative Law Judge) may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary decision is made and supported as provided in this rule, a party opposing the motion may not rest upon the mere allegations or denials of his or her pleading; the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of material fact for trial. If no such response is filed, summary decision, if appropriate, shall be rendered.

(4) Should it appear from the affidavits of a party opposing the motion that it cannot, for reasons stated, present by affidavit facts essential to justify its opposition, the Commission (or, when appropriate, the Administrative Law Judge) may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other order as is appropriate and a determination to that effect shall be made a matter of record.

(5) If on motion under this rule a summary decision is not rendered upon

the whole case or for all the relief asked and a trial is necessary, the Commission (or, when appropriate, the Administrative Law Judge) shall issue an order specifying the facts that appear without substantial controversy and directing further proceedings in the action. The facts so specified shall be deemed established.

(b) *Affidavits filed in bad faith.* (1) Should it appear to the satisfaction of the Commission (or, when appropriate, the Administrative Law Judge) at any time that any of the affidavits presented pursuant to this rule are presented in bad faith, or solely for the purpose of delay, or are patently frivolous, the Commission (or, when appropriate, the Administrative Law Judge) shall enter a determination to that effect upon the record.

(2) If upon consideration of all relevant facts attending the submission of any affidavit covered by paragraph (b)(1) of this section, the Commission (or, when appropriate, the Administrative Law Judge) concludes that action to suspend or remove an attorney from the case is warranted, it shall take action as specified in § 3.42(d). If the Administrative Law Judge to whom the Commission has referred a motion for summary decision concludes, upon consideration of all the relevant facts attending the submission of any affidavit covered by paragraph (b)(1) of this section, that the matter should be certified to the Commission for consideration of disciplinary action against an attorney, including reprimand, suspension or disbarment, the Administrative Law Judge shall certify the matter, with his or her findings and recommendations, to the Commission for its consideration of disciplinary action in the manner provided by the Commission's rules.If the Commission has addressed the motion directly, it may consider such disciplinary action without a certification by the Administrative Law Judge.

■ 10. Revise § 3.26 to read as follows:

§ 3.26 Motions following denial of preliminary injunctive relief.

(a) This section sets forth two procedures by which respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the public interest after a court has denied preliminary injunctive relief in a separate proceeding brought under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudication.

(b) A motion under this section shall be addressed to the Commission and filed with the Secretary of the Commission. Such a motion must be filed within 14 days after and may not be filed sooner than:

(1) A district court has denied preliminary injunctive relief, all opportunity has passed for the Commission to seek reconsideration of the denial or to appeal it, and the Commission has neither sought reconsideration of the denial nor appealed it; or

(2) A court of appeals has denied injunctive relief pending appeal.

(c) *Withdrawal from adjudication.* If a court has denied preliminary injunctive relief to the Commission in a section 13(b) proceeding brought in aid of an adjudicative proceeding, respondents may move that the proceeding be withdrawn from adjudication in order to consider whether or not the public interest warrants further litigation. Such a motion shall be filed jointly or separately by each of the respondents in the adjudicative proceeding. Complaint counsel may file a response within 14 days after such motion is filed. The matter will not be withdrawn from adjudication unless the Commission so orders.

(d) *Consideration on the record.* Instead of a motion to withdraw the matter from adjudication, any respondent or respondents may file a motion under this paragraph to dismiss the administrative complaint on the basis that the public interest does not warrant further litigation after a court has denied preliminary injunctive relief to the Commission. Complaint counsel may file a response within 14 days after such motion is filed. The filing of a motion to dismiss shall not stay the proceeding unless the Commission so orders.

(e) *Form.* Memoranda in support of or in opposition to such motions shall not exceed 10,000 words. This word count limitation includes headings, footnotes and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e).

(f) *In camera materials.* If any filing includes materials that are subject to confidentiality protections pursuant to an order entered in either the proceeding under section 13(b) or in the proceeding under this part, such materials shall be treated as *in camera* materials for purposes of this paragraph and the party shall file 2 versions of the document in accordance with the procedures set forth in § 3.45(e). The time within which complaint counsel may file an answer under this paragraph will begin to run upon service of the *in camera version* of the motion (including any supporting briefs and memoranda).

■ 11. Revise § 3.31, to read as follows:

§ 3.31 General discovery provisions.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things for inspection and other purposes; and requests for admission. Except as provided in the rules, or unless the Administrative Law Judge orders otherwise, the frequency or sequence of these methods is not limited. The parties shall, to the greatest extent practicable, conduct discovery simultaneously; the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(b) *Mandatory initial disclosures.* Complaint counsel and respondent's counsel shall, within 5 days of receipt of a respondent's answer to the complaint and without awaiting a discovery request, provide to each other:

(1) The name, and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in § 3.31(c)(1); and

(2) A copy of, or a description by category and location of, all documents and electronically stored information including declarations, transcripts of investigational hearings and depositions, and tangible things in the possession, custody, or control of the Commission or respondent(s) that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in § 3.31(c)(1); unless such information or materials are subject to the limitations in § 3.31(c)(2), privileged as defined in § 3.31(c)(4), pertain to hearing preparation as defined in § 3.31(c)(5), pertain to experts as defined in § 3.31A, or are obtainable from some other source that is more convenient, less burdensome, or less expensive. A party shall make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation.

(c) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge or the Commission in accordance with these

rules, the scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. Such information may include the existence, description, nature, custody, condition and location of any books, documents, other tangible things, electronically stored information, and the identity and location of persons having any knowledge of any discoverable matter. Information may not be withheld from discovery on grounds that the information will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations.* Complaint counsel need only search for materials that were collected or reviewed in the course of the investigation of the matter or prosecution of the case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter, including the Bureau of Economics. The Administrative Law Judge may authorize for good cause additional discovery of materials in the possession, custody, or control of those Bureaus or Offices, or authorize other discovery pursuant to § 3.36. Neither complaint counsel, respondent, nor a third party receiving a discovery request under these rules is required to search for materials generated and transmitted between an entity's counsel (including counsel's legal staff or in-house counsel) and not shared with anyone else, or between complaint counsel and non-testifying Commission employees, unless the Administrative Law Judge determines there is good cause to provide such materials. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he or she determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The burden and expense of the proposed discovery outweigh its likely benefit.

(3) *Electronically stored information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Administrative Law Judge may nonetheless order discovery if the requesting party shows good cause, considering the limitations of paragraph (c)(2). The Administrative Law Judge may specify conditions for the discovery.

(4) *Privilege.* Discovery shall be denied or limited in order to preserve the privilege of a witness, person, or governmental agency as governed by the Constitution, any applicable act of Congress, or the principles of the common law as they may be interpreted by the Commission in the light of reason and experience.

(5) *Hearing preparations: Materials.* Subject to the provisions of § 3.31A, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (c)(1) of this section and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of its case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Administrative Law Judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(d) *Protective orders; order to preserve evidence.* In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section. The Administrative Law Judge may also deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding. Such an order may also be issued to preserve evidence upon a showing that there is substantial reason to believe that such evidence would not otherwise be available for presentation at the hearing.

(e) *Supplementation of disclosures and responses.* A party who has made a mandatory initial disclosure under § 3.31(b) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the Administrative Law Judge or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its mandatory initial disclosures under § 3.31(b) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) A party is under a duty to amend in a timely manner a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect.

(f) *Stipulations.* When approved by the Administrative Law Judge, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

(g) *Ex parte rulings on applications for compulsory process.* Applications for the issuance of subpoenas to compel testimony at an adjudicative hearing pursuant to § 3.34 may be made *ex parte*, and, if so made, such applications and rulings thereon shall remain *ex parte* unless otherwise ordered by the Administrative Law Judge or the Commission.

(h) *Inadvertent production.* The inadvertent production of information produced by a party or third party in discovery that is subject to a claim of privilege or immunity for hearing preparation material shall not waive such claims as to that or other information regarding the same subject matter if the Administrative Law Judge determines that the holder of the claim made efforts reasonably designed to protect the privilege or the hearing preparation material, provided, however, this provision shall not apply if the party, or an entity related to that party, who inadvertently produced the privileged information relies upon such information to support a claim or defense.

(i) *Restriction on filings.* Unless otherwise ordered by the Administrative Law Judge in his or her discretion, mandatory initial and supplemental disclosures, interrogatories, depositions, requests for documents, requests for admissions, and answers and responses

thereto shall be served upon other parties but shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission, except to support or oppose a motion or to offer as evidence.

Appendix A to § 3.31: Standard Protective Order

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

It is hereby ordered that this Protective Order Governing Confidential Material (''Protective Order'') shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, ''confidential material'' shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. ''Sensitive personal information'' shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identified by individual, such as an individual's medical records. ''Document'' shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. ''Commission'' shall refer to the Federal Trade Commission (''FTC''), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation ''CONFIDENTIAL—FTC Docket No. XXXX'' or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation ''CONFIDENTIAL—FTC Docket No. XXXX'' or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the

Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in another proceeding that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

■ 12. Add § 3.31A to read as follows:

§ 3.31A Expert discovery.

(a) The parties shall serve each other with a list of experts they intend to call as witnesses at the hearing not later than 1 day after the close of fact discovery, meaning the close of discovery except for depositions and other discovery permitted under § 3.24(a)(4), and discovery for purposes of authenticity and admissibility of exhibits. Complaint counsel shall serve the other parties with a report prepared by each of its expert witnesses not later than 14 days after the close of fact discovery. Each respondent shall serve each other party with a report prepared by each of its expert witnesses not later than 28 days after the close of fact discovery. Complaint counsel shall serve respondents with a list of any rebuttal expert witnesses and a rebuttal report prepared by each such witness not later than 38 days after the close of fact discovery. Each side will be limited to calling at the evidentiary hearing 5 expert witnesses, including any rebuttal expert witnesses. A party may file a motion seeking leave to call additional expert witnesses due to extraordinary circumstances. Each report shall be signed by the expert and contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data, materials, or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years. A rebuttal report need not include any information already included in the initial report of the witness. Aside from any required information, a rebuttal report shall be limited to rebuttal of matters set forth in respondents' expert reports. If material outside the scope of fair rebuttal is presented, respondents may seek appropriate relief, including striking of all or part of the report or leave to submit a surrebuttal report. No party may call an expert witness at the hearing unless he or she has been listed and has provided reports as required by this section.

(b) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Unless otherwise ordered by the Administrative Law Judge, a deposition of any expert witness shall be conducted after the disclosure of a report prepared by the witness in accordance with paragraph (a). Depositions of expert witnesses shall be completed not later than 65 days after the close of fact discovery. Upon motion, the Administrative Law Judge may order further discovery by other means, subject to such restrictions as to scope as the Administrative Law Judge may deem appropriate. A party, however, may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for hearing and who is not listed as a witness at hearing.

■ 13. Revise § 3.33 to read as follows:

§ 3.33 Depositions.

(a) *In general.* Any party may take a deposition of any named person or of a person or persons described with reasonable particularity, provided that such deposition is reasonably expected to yield information within the scope of discovery under § 3.31(c)(1). Such party may, by motion, obtain from the Administrative Law Judge an order to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence would not otherwise be available for presentation at the hearing. Depositions may be taken before any person having power to administer oaths, either under the law of the United States or of the state or other place in which the deposition is taken, who may be designated by the party seeking the deposition, provided that such person shall have no interest in the outcome of the proceeding. The party seeking the deposition shall serve upon each person whose deposition is sought and upon each party to the proceeding reasonable notice in writing of the time and place at which it will be taken, and the name and address of each person or persons to be examined, if known, and if the name is not known, a description sufficient to identify them. The parties may stipulate in writing or the Administrative Law Judge may upon motion order that a deposition be taken by telephone or other remote electronic means. A deposition taken by such means is deemed taken at the place where the deponent is to answer questions.

(b) The Administrative Law Judge may rule on motion by a party that a deposition shall not be taken upon a determination that such deposition would not be reasonably expected to meet the scope of discovery set forth under § 3.31(c), or that the value of the deposition would be outweighed by the considerations set forth under § 3.43(b). The fact that a witness testifies at an

investigative hearing does not preclude the deposition of that witness.

(c) *Notice.*

(1) *Notice to corporation or other organization.* A party may name as the deponent a public or private corporation, partnership, association, governmental agency other than the Federal Trade Commission, or any bureau or regional office to the Federal Trade Commission, and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

(2) *Notice to Commission.* Except as provided in § 3.31(i), notices of depositions shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any party shall have the right to question him or her. Objections to questions or to evidence presented shall be in short form, stating the grounds of objections relied upon. The questions propounded and the answers thereto, together with all objections made, shall be recorded and certified by the officer. Thereafter, upon payment of the charges therefor, the officer shall furnish a copy of the deposition to the deponent and to any party.

(e) *Depositions upon written questions.* A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(1) The name and address of the person who is to answer them, and

(2) The name or descriptive title and address of the officer before whom the deposition is to be taken.

A deposition upon written questions may be taken of a public or private corporation, partnership, association, governmental agency other than the Federal Trade Commission, or any bureau or regional office of the Federal Trade Commission in accordance with the provisions of § 3.33(c). Within 30 days after the notice and written questions are served, any other party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, the party taking the deposition may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, any other party may serve recross questions upon all other parties. The content of any question shall not be disclosed to the deponent prior to the taking of the deposition. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly to take the testimony of the deponent in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him or her. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(f) *Correction of deposition.* A deposition may be corrected, as to form or substance, in the manner provided by § 3.44(b). Any such deposition shall, in addition to the other required procedures, be read to or by the deponent and signed by him or her, unless the parties by stipulation waive the signing or the deponent is unavailable or cannot be found or refuses to sign. If the deposition is not signed by the deponent within 30 days of its submission or attempted submission, the officer shall sign it and certify that the signing has been waived or that the deponent is unavailable or that the deponent has refused to sign, as the case may be, together with the reason for the refusal to sign, if any has been given. The deposition may then be used as though signed unless, on a motion to suppress under § 3.33(g)(3)(iv), the Administrative Law Judge determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. In addition to and not in lieu of the procedure for formal correction of the deposition, the deponent may enter in the record at the time of signing a list of objections to the transcription of his or her remarks, stating with specificity the alleged errors in the transcript.

(g) *Objections; errors and irregularities.*

(1) *Objections to admissibility.* Subject to the provisions of paragraph (g)(3) of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(2) *Effect of errors and irregularities in depositions*—(i)*As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(ii) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(iii) *As to taking of deposition.* (A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions are waived unless served in writing upon all parties within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(iv) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, endorsed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or with due diligence might have been ascertained.

■ 14. Revise § 3.34 to read as follows:

§ 3.34 Subpoenas.

(a) *Subpoenas ad testificandum.* Counsel for a party may sign and issue a subpoena, on a form provided by the Secretary, requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena or to attend and give testimony at an adjudicative hearing.

(b) *Subpoenas duces tecum; subpoenas to permit inspection of premises.* Counsel for a party may sign and issue a subpoena, on a form provided by the Secretary, commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things, or commanding a person to permit

inspection of premises, at a time and place therein specified. The subpoena shall specify with reasonable particularity the material to be produced. The person commanded by the subpoena need not appear in person at the place of production or inspection unless commanded to appear for a deposition or hearing pursuant to paragraph (a) of this section. As used herein, the term ''documents'' includes written materials, electronically stored information, and tangible things. A subpoena duces tecum may be used by any party for purposes of discovery, for obtaining documents for use in evidence, or for both purposes, and shall specify with reasonable particularity the materials to be produced.

(c) *Motions to quash; limitation on subpoenas subject to § 3.36.* Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation, and shall include the statement required by § 3.22(g). Nothing in paragraphs (a) and (b) of this section authorizes the issuance of subpoenas requiring the appearance of, or the production of documents in the possession, custody, or control of, an official or employee of a governmental agency other than the Commission, the Commissioners, the General Counsel, the Bureaus and Offices not involved in the matter, the office of Administrative Law Judges, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staffs, or subpoenas to be served in a foreign country, which may be authorized only in accordance with § 3.36.

■ 15. Revise § 3.35 to read as follows:

§ 3.35 Interrogatories to parties.

(a) *Availability; procedures for use.* (1) Any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation, partnership, association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. For this purpose, information shall not be deemed to be available insofar as it is in the possession of the Commissioners, the General Counsel, the office of Administrative Law Judges, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staffs.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to on grounds not raised and ruled on in connection with the authorization, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within 30 days after the service of the interrogatories. The Administrative Law Judge may allow a shorter or longer time.

(3) Except as provided in § 3.31(i), interrogatories shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission.

(b) *Scope; use at hearing.* (1) Interrogatories may relate to any matters that can be inquired into under § 3.31(c)(1), and the answers may be used to the extent permitted by the rules of evidence.

(2) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but such an interrogatory need not be answered until after

designated discovery has been completed or until a pre-trial conference or other later time.

(c) *Option to produce records.* Where the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. The specification shall include sufficient detail to permit the interrogating party to identify readily the individual documents from which the answer may be ascertained.

■ 16. Revise § 3.36, to read as follows:

§ 3.36 Applications for subpoenas for records of or appearances by certain officials or employees of the Commission or officials or employees of governmental agencies other than the Commission, and subpoenas to be served in a foreign country.

(a) *Form.* An application for issuance of a subpoena for the production of documents, as defined in § 3.34(b), or for the issuance of a request requiring the production of or access to documents, other tangible things, or electronically stored information for the purposes described in § 3.37(a), in the possession, custody, or control of the Commissioners, the General Counsel, any Bureau or Office not involved in the matter, the office of Administrative Law Judges, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staffs, or of a governmental agency other than the Commission or the officials or employees of such other agency, or for the issuance of a subpoena requiring the appearance of a Commissioner, the General Counsel, an official of any Bureau or Office not involved in the matter, an Administrative Law Judge, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staffs, or of an official or employee of another governmental agency, or for the issuance of a subpoena to be served in a foreign country, shall be made in the form of a written motion filed in accordance with the provisions of § 3.22(a). No application for records pursuant to § 4.11 of this chapter or the Freedom of Information Act may be filed with the Administrative Law Judge.

(b) *Content.* The motion shall make a showing that:

(1) The material sought is reasonable in scope;

(2) If for purposes of discovery, the material falls within the limits of discovery under § 3.31(c)(1), or, if for an adjudicative hearing, the material is reasonably relevant;

(3) If for purposes of discovery, the information or material sought cannot reasonably be obtained by other means or, if for purposes of compelling a witness to appear at the evidentiary hearing, the movant has a compelling need for the testimony;

(4) With respect to subpoenas to be served in a foreign country, that the party seeking discovery or testimony has a good faith belief that the discovery requested would be permitted by treaty, law, custom or practice in the country from which the discovery or testimony is sought and that any additional procedural requirements have been or

will be met before the subpoena is served; and

(5) If the subpoena requires access to documents or other tangible things, it meets the requirements of § 3.37.

(c) *Execution.* If an Administrative Law Judge issues an Order authorizing a subpoena pursuant to this section, the moving party may forward to the Secretary a request for the authorized subpoena, with a copy of the authorizing Order attached. Each such subpoena shall be signed by the Secretary; shall have attached to it a copy of the authorizing Order; and shall be served by the moving party only in conjunction with a copy of the authorizing Order.

■ 17. Revise § 3.37, to read as follows:

§ 3.37 Production of documents, electronically stored information, and any tangible things; access for inspection and other purposes.

(a) *Availability; procedures for use.* Any party may serve on another party a request: to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents or electronically stored information, as defined in § 3.34(b), or to inspect and copy, test, or sample any tangible things which are within the scope of § 3.31(c)(1) and in the possession, custody or control of the party upon whom the request is served; or to permit entry upon designated land or other property in the possession or control of the party upon whom the order would be served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 3.31(c)(1). Each such request shall specify with reasonable particularity the documents or things to be produced or inspected, or the property to be entered. Each such request shall also specify a reasonable time, place, and manner of making the production or inspection and performing the related acts. Each request may specify the form in which electronically stored information is to be produced, but the requested form of electronically stored information must not be overly burdensome or unnecessarily costly to the producing party. A party shall make documents available as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in § 3.34. Except as provided in § 3.31(i), requests under this section shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission.

(b) *Response; objections.* No more than 30 days after receiving the request, the response of the party upon whom the request is served shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form it intends to use. The party submitting the request may move for an order under § 3.38(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) *Production of documents or electronically stored information.* Unless otherwise stipulated or ordered by the Administrative Law Judge, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form in which it is ordinarily maintained or in a reasonably usable form; and

(iii) A party need not produce the same electronically stored information in more than one form.

■ 18. Revise § 3.38 to read as follows:

§ 3.38 Motion for order compelling disclosure or discovery; sanctions.

(a) *Motion for order to compel.* A party may apply by motion to the Administrative Law Judge for an order compelling disclosure or discovery, including a determination of the sufficiency of the answers or objections with respect to the mandatory initial disclosures required by § 3.31(b), a request for admission under § 3.32, a deposition under § 3.33, an interrogatory under § 3.35, or a production of documents or things or access for inspection or other purposes under § 3.37. Any memorandum in support of such motion shall be no longer than 2,500 words. Any response to the motion by the opposing party must be filed within 5 days of receipt of service of the motion and shall be no longer than 2,500 words. These word count limitations include headings, footnotes and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). The Administrative Law Judge shall rule on a motion to compel within 3 business days of the date in which the response is due. Unless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order that an initial disclosure or an answer to any requests for admissions, documents, depositions, or interrogatories be served or disclosure otherwise be made.

(b) If a party or an officer or agent of a party fails to comply with any discovery obligation imposed by these rules, upon motion by the aggrieved party, the Administrative Law Judge or the Commission, or both, may take such action in regard thereto as is just, including but not limited to the following:

(1) Order that any answer be amended to comply with the request, subpoena, or order;

(2) Order that the matter be admitted or that the admission, testimony, documents or other evidence would have been adverse to the party;

(3) Rule that for the purposes of the proceeding the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(4) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, agent, expert or fact witness,

or the documents or other evidence, or upon any other improperly withheld or undisclosed materials, information, witnesses or other discovery;

(5) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(6) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the party, or both.

(c) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in an initial decision of the Administrative Law Judge or an order or opinion of the Commission. It shall be the duty of parties to seek and Administrative Law Judges to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for withheld testimony, documents, or other evidence. If in the Administrative Law Judge's opinion such relief would not be sufficient, or in instances where a nonparty fails to comply with a subpoena or order, he or she shall certify to the Commission a request that court enforcement of the subpoena or order be sought.

■ 19. Revise § 3.38A to read as follows:

§ 3.38A Withholding requested material.

(a) Any person withholding material responsive to a subpoena issued pursuant to § 3.34 or § 3.36, written interrogatories requested pursuant to § 3.35, a request for production or access pursuant to § 3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or other request for production, submit, together with such claim, a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed — and does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. The schedule need not describe any material outside the scope of the duty to search set forth in § 3.31(c)(2) except to the extent that the Administrative Law Judge has authorized additional discovery as provided in that paragraph.

(b) A person withholding material for reasons described in § 3.38A(a) shall comply with the requirements of that subsection in lieu of filing a motion to limit or quash compulsory process.

(Sec. 5, 38 Stat. 719 as amended (15 U.S.C. 45))

■ 20. Revise § 3.39 to read as follows:

§ 3.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) Where Commission complaint counsel desire the issuance of an order requiring a witness or deponent to testify or provide other information and granting immunity under title 18, section 6002, United States Code, Directors and Assistant Directors of Bureaus and Regional Directors and Assistant Regional Directors of Commission Regional Offices who supervise complaint counsel responsible for presenting evidence in support of the complaint are authorized to determine:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his or her privilege against self-incrimination; and to request, through the Commission's liaison officer, approval by the Attorney General for the issuance of such order. Upon receipt of approval by the Attorney General (or his or her designee), the Administrative Law Judge is authorized to issue an order requiring the witness or deponent to testify or provide other information and granting immunity when the witness or deponent has invoked his or her privilege against self-incrimination and it cannot be determined that such privilege was improperly invoked.

(b) Requests by counsel other than Commission complaint counsel for an order requiring a witness to testify or provide other information and granting immunity under title 18, section 6002, United States Code, may be made to the Administrative Law Judge and may be made*ex parte*. When such requests are made, the Administrative Law Judge is authorized to determine:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his or her privilege against self-incrimination; and, upon making such determinations, to request, through the Commission's liaison officer, approval by the Attorney General for the issuance of an order requiring a witness to testify or provide other information and granting immunity; and, after the Attorney General (or his or her designee) has granted such approval, to issue such order when the witness or deponent has invoked his or her privilege against self-incrimination and it cannot be determined that such privilege was improperly invoked.

(18 U.S.C. 6002, 6004)

■ 21. Revise § 3.41, including the heading, to read as follows:

§ 3.41 General hearing rules.

(a) *Public hearings.* All hearings in adjudicative proceedings shall be public unless an *in camera* order is entered by the Administrative Law Judge pursuant to § 3.45(b) of this chapter or unless otherwise ordered by the Commission.

(b) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded. The hearing will take place on the date specified in the notice accompanying the complaint, pursuant to § 3.11(b)(4), and should be limited to no more than 210 hours. The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence or extend the number of hours for the hearing. Consistent with the requirements of expedition:

(1) The Administrative Law Judge may order hearings at more than one place and may grant a reasonable recess at the end of a case-in-chief for the purpose of discovery deferred during the pre-hearing procedure if the Administrative Law Judge determines that such recess will materially expedite the ultimate disposition of the proceeding.

(2) When actions involving a common question of law or fact are pending before the Administrative Law Judge, the Commission or the Administrative Law Judge may order a joint hearing of any or all the matters in issue in the actions; the Commission or the Administrative Law Judge may order all the actions consolidated; and the Commission or the Administrative Law Judge may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(3) When separate hearings will be conducive to expedition and economy, the Commission or the Administrative Law Judge may order a separate hearing of any claim, or of any separate issue, or of any number of claims or issues.

(4) Each side shall be allotted no more than half of the trial time within which to present its opening statements, *in limine* motions, all arguments excluding the closing argument, direct or cross examinations, or other evidence.

(5) Each side shall be permitted to make an opening statement that is no more than 2 hours in duration.

(6) Each side shall be permitted to make a closing argument no later than 5 days after the last filed proposed findings. The closing argument shall last no longer than 2 hours.

(c) *Rights of parties.* Every party, except intervenors, whose rights are determined under § 3.14, shall have the right of due notice, cross-examination, presentation of evidence, objection,

motion, argument, and all other rights essential to a fair hearing.

(d) *Adverse witnesses.* An adverse party, or an officer, agent, or employee thereof, and any witness who appears to be hostile, unwilling, or evasive, may be interrogated by leading questions and may also be contradicted and impeached by the party calling him or her.

(e) Requests for an order requiring a witness to testify or provide other information and granting immunity under title 18, section 6002, of the United States Code, shall be disposed of in accordance with § 3.39.

(f) *Collateral federal court actions.*The pendency of a collateral federal court proceeding that relates to the administrative adjudication shall not stay the proceeding unless the Commission (or a court of competent jurisdiction) so orders for good cause. A stay shall toll any deadlines set by the rules.

(18 U.S.C. 6002, 6004)

■ 22. Revise § 3.42 to read as follows:

§ 3.42 Presiding officials.

(a) *Who presides.* Hearings in adjudicative proceedings shall be presided over by a duly qualified Administrative Law Judge or by the Commission or one or more members of the Commission sitting as Administrative Law Judges; and the term *Administrative Law Judge* as used in this part means and applies to the Commission or any of its members when so sitting. The Commission or one or more members of the Commission may preside over discovery and other prehearing proceedings and then transfer the matter to an Administrative Law Judge to preside over any remaining prehearing proceedings and the evidentiary hearing and to issue an initial decision.

(b) *How assigned.* The presiding Administrative Law Judge shall be designated by the Chief Administrative Law Judge or, when the Commission or one or more of its members preside, by the Commission, who shall notify the parties of the Administrative Law Judge designated.

(c) *Powers and duties.* Administrative Law Judges shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and orders requiring answers to questions;

(3) To take depositions or to cause depositions to be taken;

(4) To compel admissions, upon request of a party or on their own initiative;

(5) To rule upon offers of proof and receive evidence;

(6) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(7) To hold conferences for settlement, simplification of the issues, or any other proper purpose;

(8) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults;

(9) To make and file initial decisions;

(10) To certify questions to the Commission for its determination;

(11) To reject written submissions that fail to comply with rule requirements, or deny *in camera* status without prejudice until a party complies with all relevant rules; and

(12) To take any action authorized by the rules in this part or in conformance with the provisions of the Administrative Procedure Act as restated and incorporated in title 5, United States Code.

(d) *Suspension of attorneys by Administrative Law Judge.* The Administrative Law Judge shall have the authority, for good cause stated on the record, to suspend or bar from participation in a particular proceeding any attorney who shall refuse to comply with his or her directions, or who shall be guilty of disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of such proceeding. Any attorney so suspended or barred may appeal to the Commission in accordance with the provisions of § 3.23(a). The appeal shall not operate to suspend the hearing unless otherwise ordered by the Administrative Law Judge or the Commission; in the event the hearing is not suspended, the attorney may continue to participate therein pending disposition of the appeal.

(e) *Substitution of Administrative Law Judge.* In the event of the substitution of a new Administrative Law Judge for the one originally designated, any motion predicated upon such substitution shall be made within 5 days thereafter.

(f) *Interference.* In the performance of their adjudicative functions, Administrative Law Judges shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission, and all direction by the Commission to Administrative Law Judges concerning any adjudicative proceedings shall appear in and be made a part of the record.

(g) *Disqualification of Administrative Law Judges.* (1) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw therefrom by notice on the record and shall notify the Director of Administrative Law Judges of such withdrawal.

(2) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, such party may file with the Secretary a motion addressed to the Administrative Law Judge to disqualify and remove him or her, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. If the Administrative Law Judge does not disqualify himself or herself within 10 days, he or she shall certify the motion to the Commission, together with any statement he or she may wish to have considered by the Commission. The Commission shall promptly determine the validity of the grounds alleged, either directly or on the report of another Administrative Law Judge appointed to conduct a hearing for that purpose.

(3) Such motion shall be filed at the earliest practicable time after the participant learns, or could reasonably have learned, of the alleged grounds for disqualification.

(h)*Failure to comply with Administrative Law Judge's directions.* Any party who refuses or fails to comply with a lawfully issued order or direction of an Administrative Law Judge may be considered to be in contempt of the Commission. The circumstances of any such neglect, refusal, or failure, together with a recommendation for appropriate action, shall be promptly certified by the Administrative Law Judge to the Commission. The Commission may make such orders in regard thereto as the circumstances may warrant.

■ 23. Revise § 3.43 to read as follows:

§ 3.43 Evidence.

(a) *Burden of proof.* Counsel representing the Commission, or any person who has filed objections sufficient to warrant the holding of an adjudicative hearing pursuant to § 3.13, shall have the burden of proof, but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted.

Irrelevant, immaterial, and unreliable evidence shall be excluded. Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or if the evidence would be misleading, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair. Hearsay is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted. If otherwise meeting the standards for admissibility described in this paragraph, depositions, investigational hearings, prior testimony in Commission or other proceedings, and any other form of hearsay, shall be admissible and shall not be excluded solely on the ground that they are or contain hearsay. Statements or testimony by a party-opponent, if relevant, shall be admitted.

(c)*Admissibility of third party documents.* Extrinsic evidence of authenticity as a condition precedent to admissibility of documents received from third parties is not required with respect to the original or a duplicate of a domestic record of regularly conducted activity by that third party that otherwise meets the standards of admissibility described in paragraph (b) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record: (1) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (2) was kept in the course of the regularly conducted activity; and (3) was made by the regularly conducted activity as a regular practice.

(d) *Presentation of evidence.*

(1) A party is entitled to present its case or defense by sworn oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the Administrative Law Judge, may be required for a full and true disclosure of the facts.

(2) The Administrative Law Judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(i) Make the interrogation and presentation effective for the ascertainment of the truth;

(ii) Avoid needless consumption of time; and

(iii) Protect witnesses from harassment or undue embarrassment.

(3) As respondents are in the best position to determine the nature of documents generated by such respondents and which come from their own files, the burden of proof is on the respondent to introduce evidence to rebut a presumption that such documents are authentic and kept in the regular course of business.

(e) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by counsel representing the Commission when necessary in connection with adjudicative proceedings and may be offered in evidence by counsel representing the Commission in any such proceeding.

(f) *Official notice.* ''Official notice'' may be taken of any material fact that is not subject to reasonable dispute in that it is either (1) generally known within the Commission's expertise, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. If official notice is requested or is taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to disprove such noticed fact.

(g) *Objections.* Objections to evidence shall timely and briefly state the grounds relied upon, but the transcript shall not include argument or debate thereon except as ordered by the Administrative Law Judge. Rulings on all objections shall appear in the record.

(h) *Exceptions.* Formal exception to an adverse ruling is not required.

(i) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the questioner may make a specific offer of what he or she expects to prove by the answer of the witness, or the Administrative Law Judge may, in his or her discretion, receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

■ 24. Revise § 3.44 to read as follows:

§ 3.44 Record.

(a) *Reporting and transcription.* Hearings shall be stenographically reported and transcribed by the official reporter of the Commission under the supervision of the Administrative Law Judge, and the original transcript shall be a part of the record and the sole official transcript. The live oral testimony of each witness shall be video recorded digitally, and the video recording and the written transcript of the testimony shall be made part of the record. Copies of transcripts are available from the reporter at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections ordered by the Administrative Law Judge or agreed to in a written stipulation signed by all counsel and parties not represented by counsel, and approved by the Administrative Law Judge, shall be included in the record, and such stipulations, except to the extent they are capricious or without substance, shall be approved by the Administrative Law Judge. Corrections shall not be ordered by the Administrative Law Judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the official reporter by furnishing substitute type pages, under the usual certificate of the reporter, for insertion in the official record. The original uncorrected pages shall be retained in the files of the Commission.

(c) *Closing of the hearing record.* Upon completion of the evidentiary hearing, the Administrative Law Judge shall issue an order closing the hearing record after giving the parties 3 business days to determine if the record is complete or needs to be supplemented. The Administrative Law Judge shall retain the discretion to permit or order correction of the record as provided in § 3.44(b).

■ 25. Revise § 3.45 to read as follows:

§ 3.45 In camera orders.

(a) *Definition.* Except as hereinafter provided, material made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.

(b) *In camera treatment of material.* A party or third party may obtain *in camera*treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge. Parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days notice of the proposed use of such material. Each such motion must include an attachment containing a copy of each page of the document in question on which *in camera* or otherwise confidential excerpts appear. The Administrative Law Judge may order that such material, whether admitted or rejected, be placed *in camera*only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment. This finding shall be based on the standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *see also Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977), which established a three-part test that was modified by *General Foods Corp.*, 95 F.T.C. 352, 355 (1980). The party submitting material for which *in camera* treatment is sought must provide, for each piece of such evidence and affixed to such evidence, the name and address of any person who should be notified in the event that the Commission intends to disclose *in camera* information in a final decision. No material, or portion thereof, offered into evidence, whether admitted or rejected, may be withheld from the public record unless it falls within the scope of an order issued in accordance with this section, stating the date on which*in camera* treatment will expire, and including:

(1) A description of the material;

(2) A statement of the reasons for granting *in camera* treatment; and

(3) A statement of the reasons for the date on which *in camera* treatment will expire. Such expiration date may not be omitted except in unusual circumstances, in which event the order shall state with specificity the reasons why the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to *in camera* treatment for an indeterminate period. If an *in camera* order is silent as to duration, without explanation, then it will expire 3 years after its date of issuance. Material subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, or other appropriate container, bearing the title, the docket number of the proceeding, the notation ''*In Camera* Record under § 3.45,'' and the date on which *in camera* treatment expires. If the Administrative Law Judge has determined that*in camera* treatment should be granted for an indeterminate period, the notation should state that fact.

Parties are not required to provide documents subject to *in camera* treatment, including documents obtained from third parties, to any individual or entity other than the Administrative Law Judge, counsel for other parties, and, during an appeal, the Commission or a federal court.

(c) *Release of in camera material. In camera* material constitutes part of the confidential records of the Commission and is subject to the provisions of § 4.11 of this chapter.

(d) *Briefs and other submissions referring to in camera or confidential information.* Parties shall not disclose information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order in the public version of proposed findings, briefs, or other documents. This provision does not preclude references in such proposed findings, briefs, or other documents to *in c*amera or other confidential information or general statements based on the content of such information.

(e) *When in camera or confidential information is included in briefs and other submissions.* If a party includes specific information that has been granted *in camera*status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order in any document filed in a proceeding under this part, the party shall file 2 versions of the document. A complete version shall be marked ''*In Camera*'' or ''Subject to Protective Order,'' as appropriate, on the first page and shall be filed with the Secretary and served by the party on the other parties in accordance with the rules in this part. Submitters of *in camera* or other confidential material should mark any such material in the complete versions of their submissions in a conspicuous matter, such as with highlighting or bracketing. References to *in camera* or confidential material must be supported by record citations to relevant evidentiary materials and associated Administrative Law Judge *in camera* or other confidentiality rulings to confirm that *in camera* or other confidential treatment is warranted for such material. In addition, the document must include an attachment containing a copy of each page of the document in question on which *in camera* or otherwise confidential excerpts appear, and providing the name and address of any person who should be notified of the Commission's intent to disclose in a final decision any of the *in camera* or otherwise confidential information in the document. Any time period within which these rules allow a party to respond to a document shall run from the date the party is served with the complete version of the document. An expurgated version of the document, marked ''Public Record'' on the first page and omitting the *in camera* and confidential information and attachment that appear in the complete version, shall be filed with the Secretary within 5 days after the filing of the complete version, unless the Administrative Law Judge or the Commission directs otherwise, and shall be served by the party on the other parties in accordance with the rules in this part. The expurgated version shall indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the *in camera* version.

(f) *When in camera or confidential information is included in rulings or recommendations of the Administrative Law Judge.* If the Administrative Law Judge includes in any ruling or recommendation information that has been granted *in camera*status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the Administrative Law Judge shall file 2 versions of the ruling or recommendation. A complete version shall be marked ''*In Camera*'' or ''Subject to Protective Order,'' as appropriate, on the first page and shall be served upon the parties. The complete version will be placed in the *in camera* record of the proceeding. An expurgated version, to be filed within 5 days after the filing of the complete version, shall omit the*in camera* and confidential information that appears in the complete version, shall be marked ''Public Record'' on the first page, shall be served upon the parties, and shall be included in the public record of the proceeding.

(g) *Provisional in camera rulings.* The Administrative Law Judge may make a provisional grant of*in camera* status to materials if the showing required in § 3.45(b) cannot be made at the time the material is offered into evidence but the Administrative Law Judge determines that the interests of justice would be served by such a ruling. Within 20 days of such a provisional grant of *in camera* status, the party offering the evidence or an interested third party must present a motion to the Administrative Law Judge for a final ruling on whether *in camera*

treatment of the material is appropriate pursuant to § 3.45(b). If no such motion is filed, the Administrative Law Judge may either exclude the evidence, deny *in camera* status, or take such other action as is appropriate.

■ 26. Revise § 3.46 to read as follows:

§ 3.46 Proposed findings, conclusions, and order.

(a) *General.* Within 21 days of the closing of the hearing record, each party may file with the Secretary for consideration of the Administrative Law Judge proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. If a party includes in the proposals information that has been granted *in camera* status pursuant to § 3.45(b), the party shall file 2 versions of the proposals in accordance with the procedures set forth in § 3.45(e). Reply findings of fact, conclusions of law, and briefs may be filed by each party within 10 days of service of the initial proposed findings.

(b) *Exhibit Index.* The first statement of proposed findings of fact and conclusions of law filed by a party shall include an index listing for each exhibit offered by the party and received in evidence:

(1) The exhibit number, followed by

(2) The exhibit's title or a brief description if the exhibit is untitled;

(3) The transcript page at which the Administrative Law Judge ruled on the exhibit's admissibility or a citation to any written order in which such ruling was made;

(4) The transcript pages at which the exhibit is discussed;

(5) An identification of any other exhibit which summarizes the contents of the listed exhibit, or of any other exhibit of which the listed exhibit is a summary;

(6) A cross-reference, by exhibit number, to any other portions of that document admitted as a separate exhibit on motion by any other party; and

(7) A statement whether the exhibit has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

(c) *Witness index.* The first statement of proposed findings of fact and conclusions of law filed by a party shall also include an index to the witnesses called by that party, to include for each witness:

(1) The name of the witness;

(2) A brief identification of the witness;

(3) The transcript pages at which any testimony of the witness appears; and

(4) A statement whether the exhibit has been accorded*in camera* treatment, and a citation to the *in camera* ruling.

(d) *Stipulated indices.* As an alternative to the filing of separate indices, the parties are encouraged to stipulate to joint exhibit and witness indices at the time the first statement of proposed findings of fact and conclusions of law is due to be filed.

(e) *Rulings.* The record shall show the Administrative Law Judge's ruling on each proposed finding and conclusion, except when the order disposing of the proceeding otherwise informs the parties of the action taken.

■ 27. Revise § 3.51 to read as follows:

§ 3.51 Initial decision.

(a) *When filed and when effective.* The Administrative Law Judge shall file an initial decision within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order pursuant to § 3.46, or within 85 days of the closing the hearing record pursuant to § 3.44(c) where the parties have waived the filing of proposed findings. The Administrative Law Judge, for good cause, may extend these time periods by 30 days. The Administrative Law Judge shall file an initial decision within 14 days after a default or the granting of a motion for summary decision. The Commission may extend any of these time limits. In no event shall the Administrative Law Judge file an initial decision later than 1 year after the issuance of the administrative complaint. Extensions of the 1-year deadline may be granted by the Commission upon a finding of extraordinary circumstances and if appropriate in the public interest. Once issued, the initial decision shall become the decision of the Commission 30 days after service thereof upon the parties or 30 days after the filing of a timely notice of appeal, whichever shall be later, unless a party filing such a notice shall have perfected an appeal by the timely filing of an appeal brief or the Commission shall have issued an order placing the case on its own docket for review or staying the effective date of the decision.

(b) *Exhaustion of administrative remedies.* An initial decision shall not be considered final agency action subject to judicial review under 5 U.S.C. 704. Any objection to a ruling by the Administrative Law Judge, or to a finding, conclusion or a provision of the order in the initial decision, which is not made a part of an appeal to the Commission shall be deemed to have been waived.

(c) *Content, format for filing.* (1) An initial decision shall be based on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable and probative evidence. The initial decision shall include a statement of findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate rule or order. Rulings containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f).

(2) The initial decision shall be prepared in a common word processing format, such as WordPerfect or Word, and shall be filed by the Administrative Law Judge with the Office of the Secretary in both electronic and paper versions.

(3) When more than one claim for relief is presented in an action, or when multiple parties are involved, the Administrative Law Judge may direct the entry of an initial decision as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of initial decision.

(d) *By whom made.* The initial decision shall be made and filed by the Administrative Law Judge who presided over the hearings, except when he or she shall have become unavailable to the Commission.

(e) *Reopening of proceeding by Administrative Law Judge; termination of jurisdiction.* (1) At any time from the close of the hearing record pursuant to § 3.44(c) until the filing of his or her initial decision, an Administrative Law Judge may reopen the proceeding for the reception of further evidence for good cause shown.

(2) Except for the correction of clerical errors or pursuant to an order of remand from the Commission, the jurisdiction of the Administrative Law Judge is terminated upon the filing of his or her initial decision with respect to those issues decided pursuant to paragraph (c)(1) of this section.

■ 28. Revise § 3.52 to read as follows:

§ 3.52 Appeal from initial decision.

(a) *Who may file; notice of intention.* Any party to a proceeding may appeal an initial decision to the Commission by filing a notice of appeal with the

Secretary within 10 days after service of the initial decision. The notice shall specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from. If a timely notice of appeal is filed by a party, any other party may thereafter file a notice of appeal within 5 days after service of the first notice, or within 10 days after service of the initial decision, whichever period expires last.

(b) *Appeal brief.* (1) The appeal shall be in the form of a brief, filed within 30 days after service of the initial decision, and shall contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A concise statement of the case, which includes a statement of facts relevant to the issues submitted for review, and a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(iii) A specification of the questions intended to be urged;

(iv) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(v) A proposed form of order for the Commission's consideration instead of the order contained in the initial decision.

(2) The brief shall not, without leave of the Commission, exceed 14,000 words.

(c) *Answering brief.* Within 30 days after service of the appeal brief, the appellee may file an answering brief, which shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto, as well as arguments in response to the appellant's appeal brief. However, if the appellee is also cross-appealing, its answering brief shall also contain its arguments as to any issues the party is raising on cross-appeal, including the points of fact and law relied upon in support of its position on each question, with specific page references to the record and legal or other material on which the party relies in support of its cross-appeal, and a proposed form of order for the Commission's consideration instead of the order contained in the initial decision. If the appellee does not cross-appeal, its answering brief shall not, without leave of the Commission, exceed 14,000 words. If the appellee cross-appeals, its brief in answer and on cross-appeal shall not, without leave of the Commission, exceed 16,500 words.

(d) *Reply brief.* Within 7 days after service of the appellee's answering brief, the appellant may file a reply brief, which shall be limited to rebuttal of matters in the answering brief and shall not, without leave of the Commission, exceed 7,000 words. If the appellee has cross-appealed, any party who is the subject of the cross-appeal may, within 30 days after service of such appellee's brief, file a reply brief, which shall be limited to rebuttal of matters in the appellee's brief and shall not, without leave of the Commission, exceed 7,000 words. The appellee who has cross-appealed may, within 7 days after service of a reply to its cross-appeal, file an additional brief, which shall be limited to rebuttal of matters in the reply to its cross-appeal and shall not, without leave of the Commission, exceed 7,000 words. The Commission will not consider new arguments or matters raised in reply briefs that could have been raised earlier in the principal briefs.

(e) *In camera information.* If a party includes in any brief to be filed under this section information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality provisions pursuant to a protective order, the party shall file 2 versions of the brief in accordance with the procedures set forth in § 3.45(e). The time period specified by this section within which a party may file an answering or reply brief will begin to run upon service on the party of the *in camera* or confidential version of a brief.

(f) *Signature.* (1) The original of each brief filed shall have a hand-signed signature by an attorney of record for the party, or in the case of parties not represented by counsel, by the party itself, or by a partner if a partnership, or by an officer of the party if it is a corporation or an unincorporated association.

(2) Signing a brief constitutes a representation by the signer that he or she has read it; that to the best of his or her knowledge, information, and belief, the statements made in it are true; that it is not interposed for delay; that it complies all the applicable word count limitation; and that to the best of his or her knowledge, information, and belief, it complies with all the other rules in this part. If a brief is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the brief has not been filed.

(g) *Designation of appellant and appellee in cases involving cross-appeals.* In a case involving an appeal by complaint counsel and one or more respondents, any respondent who has filed a timely notice of appeal and as to whom the Administrative Law Judge has issued an order to cease and desist shall be deemed an appellant for purposes of paragraphs (b), (c), and (d) of this section. In a case in which the Administrative Law Judge has dismissed the complaint as to all respondents, complaint counsel shall be deemed the appellant for purposes of paragraphs (b), (c), and (d) of this section.

(h) *Oral argument.* All oral arguments shall be public unless otherwise ordered by the Commission. Oral arguments will be held in all cases on appeal to the Commission unless the Commission otherwise orders upon its own initiative or upon request of any party made at the time of filing his or her brief. Oral arguments before the Commission shall be reported stenographically, unless otherwise ordered, and a member of the Commission absent from an oral argument may participate in the consideration and decision of the appeal in any case in which the oral argument is stenographically reported.

(i) *Corrections in transcript of oral argument.* The Commission will entertain only joint motions of the parties requesting corrections in the transcript of oral argument, except that the Commission will receive a unilateral motion which recites that the parties have made a good faith effort to stipulate to the desired corrections but have been unable to do so. If the parties agree in part and disagree in part, they should file a joint motion incorporating the extent of their agreement, and, if desired, separate motions requesting those corrections to which they have been unable to agree. The Secretary, pursuant to delegation of authority by the Commission, is authorized to prepare and issue in the name of the Commission a brief ''Order Correcting Transcript'' whenever a joint motion to correct transcript is received.

(j) *Briefs of amicus curiae.* A brief of an amicus curiae may be filed by leave of the Commission granted on motion with notice to the parties or at the request of the Commission, except that such leave shall not be required when the brief is presented by an agency or officer of the United States; or by a State, territory, commonwealth, or the District of Columbia, or by an agency or

officer of any of them. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and state how a Commission decision in the matter would affect the applicant or persons it represents. The motion shall also state the reasons why a brief of an amicus curiae is desirable. Except as otherwise permitted by the Commission, an amicus curiae shall file its brief within the time allowed the parties whose position as to affirmance or reversal the amicus brief will support. The Commission shall grant leave for a later filing only for cause shown, in which event it shall specify within what period such brief must be filed. A motion for an amicus curiae to participate in oral argument will be granted only for extraordinary reasons. An amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief.

(k) *Word count limitation.* The word count limitations in this section include headings, footnotes and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). Extensions of word count limitations are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit.

PART 4—MISCELLANEOUS RULES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Amend § 4.3 by revising paragraph (b) as follows:

§ 4.3 Time.

* * * * *

(b) *Extensions.* For good cause shown, the Administrative Law Judge may, in any proceeding before him or her: (1) extend any time limit prescribed or allowed by order of the Administrative Law Judge or the Commission (if the Commission order expressly authorizes the Administrative Law Judge to extend time periods); or (2) extend any time limit prescribed by the rules in this chapter, except those governing motions directed to the Commission, interlocutory appeals and initial decisions and deadlines that the rules expressly authorize only the Commission to extend. Except as otherwise provided by law, the Commission, for good cause shown, may extend any time limit prescribed by the rules in this chapter or by order of the Commission or an Administrative Law Judge, provided, however, that in a proceeding pending before an Administrative Law Judge, any motion on which he or she may properly rule shall be made to the Administrative Law Judge. Notwithstanding the above, where a motion to extend is made after the expiration of the specified period, the motion may be considered where the untimely filing was the result of excusable neglect.

* * * * *

By direction of the Commission, Commissioner Rosch not participating.

Donald S. Clark

Secretary

[FR Doc. E8–23745 Filed 10–6–08: 8:45 am]

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Federal Register

Tuesday,
October 7, 2008

Part V

The President

Federal Register
Vol. 73, No. 195
Tuesday, October 7, 2008

Presidential Documents

Title 3—

The President

Proclamation 8300 of October 3, 2008

Child Health Day, 2008

By the President of the United States of America

A Proclamation

Americans have a duty to promote the health and safety of our children. On Child Health Day, we affirm that all children are a precious gift, and we underscore our commitment to helping them realize their full potential.

Families are the foundation of our society, and parents play the vital role of providing stability, guidance, and discipline so children can lead healthy lives. Teachers, caregivers, and mentors can also help teach children about the importance of making good choices. All Americans can help our Nation's youth become healthy and responsible adults by encouraging them to avoid risky behaviors such as early sexual activity, drugs, alcohol, and violence.

My Administration remains dedicated to helping younger generations achieve their dreams by supporting programs that encourage children to maintain healthy and active lifestyles. The Helping America';s Youth initiative, led by First Lady Laura Bush, is helping children make smart decisions so they can confront challenges and live longer and better lives. The HealthierUS initiative encourages positive habits and addresses public health issues facing our Nation's youth, such as childhood obesity. Through the President's Challenge, we are promoting personal fitness and encouraging youth to stay active beyond the school gym. Through these and other efforts, we can make our country stronger by teaching children the importance of healthy choices.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 6, 2008, as Child Health Day. I call upon families, schools, child health professionals, faith-based and community organizations, and State and local governments to reach out to our Nation's young people, encourage them to avoid dangerous behavior, and help them make the right choices to achieve their dreams.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–23948
Filed 10–6–08; 11:30 am]
Billing code 3195–W9–P

Federal Register
Vol. 73, No. 195
Tuesday, October 7, 2008

Presidential Documents

Title 3—

The President

Proclamation 8301 of October 3, 2008

German-American Day, 2008

By the President of the United States of America

A Proclamation

For generations, German Americans have contributed to our Nation's identity, culture, and prosperity. On German-American Day, we recognize the many Americans with German ancestry who helped make our country great, and we celebrate our strong friendship with Germany.

The people of Germany and the United States share important family and cultural ties, and millions of American citizens are of German descent. Some of their forebears were among the first to settle Jamestown, and they and many others like them helped lay the foundation for our country, which has become the most prominent symbol of freedom in the world. Many German Americans have shaped our way of life and added to our country's rich heritage.

In celebrating German-American Day, we honor generations of German Americans who came to our shores with dreams of opportunity and contributed to the greatness of our country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6, 2008, as German-American Day. I encourage all Americans to celebrate the many contributions German Americans have made to our Nation's liberty and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–23949
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Federal Register
Vol. 73, No. 195
Tuesday, October 7, 2008

Presidential Documents

Title 3—

The President

Presidential Determination No. 2008–29 of September 30, 2008

Fiscal Year 2009 Refugee Admissions Numbers And Authorizations of In-country Refugee Status Pursuant To Sections 207 And 101(A)(42), Respectively, of the Immigration And Nationality Act, And Determination Pursuant To Section 2(B)(2) of the Migration And Refugee Assistance Act, As Amended

Memorandum for the Secretary of State [and] the Secretary of Homeland Security

In accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 80,000 refugees to the United States during Fiscal Year(FY) 2009 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2009 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below. The ceiling shall be construed as a maximum not to be exceeded and not a minimum to be achieved.

The 80,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number of admissions allocated to the East Asia region shall include persons admitted to the United States during FY 2009 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members):

Africa	12,000
East Asia	19,000
Europe and Central Asia	2,500
Latin America/Caribbean	4,500
Near East/South Asia	37,000
Unallocated Reserve	5,000

The 5,000 unallocated refugee numbers shall be allocated to regional ceilings, as needed. Upon providing notification to the Judiciary Committees of the Congress, the Secretary of State is hereby authorized to use unallocated admissions in regions where the need for additional admissions arises.

Additionally, upon notification to the Judiciary Committees of the Congress, the Secretary of State is further authorized to transfer unused admissions allocated to a particular region to one or more other regions, if there is a need for greater admissions for the region or regions to which the admissions are being transferred. Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

Consistent with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), and after appropriate consultation with the Congress, I also specify that, for FY 2009, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam
b. Persons in Cuba
c. Persons in the former Soviet Union
d. Persons in Iraq
e. In exceptional circumstances, persons identified by a United States Embassy in any location

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 30, 2008

[FR Doc. E8–23950
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Tuesday, October 7, 2008

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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S.J. Res. 35/P.L. 110–341

To amend Public Law 108-331 to provide for the construction and related activities in support of the Very Energetic Radiation Imaging Telescope Array System (VERITAS) project in Arizona. (Oct. 3, 2008; 122 Stat. 3738)

S.J. Res. 45/P.L. 110–342

Expressing the consent and approval of Congress to an interstate compact regarding water resources in the Great Lakes--St. Lawrence River Basin. (Oct. 3, 2008; 122 Stat. 3739)

H.R. 1424/P.L. 110–343

To provide authority for the Federal Government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes. (Oct. 3, 2008; 122 Stat. 3765)

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